

May 6, 2024

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Re: Continuing Civil Rights Violations at Berkeley Unified School District

Dear Assistant Secretary Lhamon and Director Frangos:

## **I. Introduction**

The Louis D. Brandeis Center for Human Rights Under Law (the Brandeis Center) and the Anti-Defamation League (ADL) file this supplement to their February 28, 2024 complaint, setting forth new and continuing violations of Title VI in the Berkeley Unified School District (BUSD).

After we filed our Title VI Complaint, the already-hostile environment for Jewish and Israeli students at BUSD took a turn for the worse, with violent graffiti appearing on the grounds, anti-Semitic rhetoric affecting students as young as six years old, cyberbullying of a teen whose parent spoke out against the anti-Semitic environment permeating her son's school, and teachers doubling down on biased lessons drawn from media outside the approved curriculum. Although parents continue to report anti-Semitic incidents, the District continues to turn a blind eye, refusing to discipline the perpetrators or take steps to protect the victims. In the absence of District leadership, Jew hatred is escalating at an alarming level.

In a recent OCR decision in which the Park City School District (“Park City”) was found to have violated Title VI and Title IX,<sup>1</sup> OCR found that ongoing harassment was evidence of an insufficient response. Unlike in BUSD, where no steps have been taken, Park City actually “disciplined some of the harassers[,] . . . provid[ed] additional training for administrators, [sent] mass emails to parents of students . . . , produc[ed] videos about harassment . . . , initiat[ed] a ‘standing together against hate’ campaign. . . , and conduct[ed] presentations or . . . discussions about harassment.”<sup>2</sup> OCR found that “these responses were insufficient to end the harassment or prevent its recurrence, as evidenced by ongoing harassment,” noting the “inefficacy of the District’s response.”<sup>3</sup> BUSD—unlike Park City—has not even tried to address the rampant anti-Semitism in its schools and has instead allowed anti-Semitism to run rampant. We urge OCR to investigate.

## II. Supplemental Facts—Ongoing Harassment and Hostile Environment

The following is a non-exhaustive list of anti-Semitic incidents in the District that have taken place since LDB and ADL filed their Title VI Complaint against BUSD. These examples illustrate the escalating hostile environment and BUSD’s complete failure to comply with its legal obligations to take prompt and effective steps “reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring.”<sup>4</sup>

### 1. Violent anti-Semitic graffiti.

a. In early March, just days after the Title VI Complaint was filed, a Jewish student was alarmed to find violent graffiti stating “Kill Jews” in the school bathroom. BUSD did not issue a statement denouncing Jew hatred or expressing a zero-tolerance policy for violence against Jewish members of the school community. Upon information and belief, BUSD failed to investigate this violent threat against Jews or discipline anyone in connection with this graffiti.

The BUSD community was widely aware of the graffiti due to media coverage, which made the district’s silence even more frightening to the District’s Jewish and Israeli families.

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<sup>1</sup> March 20, 2024, Letter from J. Aaron Romine, Regional Director, United States Department of Education Office for Civil Rights.

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08231193-a.pdf>

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.*

<sup>4</sup> See Dear Colleague Letter, U.S. DEP’T OF EDUC. – OFFICE FOR C.R. (Nov. 7, 2023) at 2, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf> (“2023 Dear Colleague Letter”)

**b.** In another instance, graffiti stating “Kill all Zionists” was found on the bus stop used by many BHS students for transport to and from school, and the graffiti remained for days after it was reported. BUSD made no statement denouncing the violent and threatening rhetoric against the Jewish and Israeli members of the school community.<sup>5</sup>

## **2. Bullying by peers.**

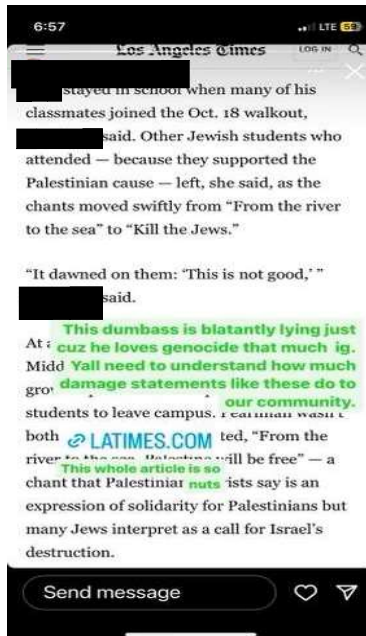
**a.** On March 20, 2024, a first grader at Washington Elementary School heard older children on the playground say “Jews are stupid.” That evening, the six-year-old was visibly distressed and told his mother that he wishes he wasn’t Jewish, and that people don’t like Jews. Since the incident, he has not wanted to go to school.

When the first grader’s mother spoke to the school principal, he suggested that the first grader take it upon himself to speak with the older bullies and take the lead in resolving the problem. He added that there have only been a handful of anti-Semitic incidents this year at Washington Elementary, and that anti-Semitism was not something “on his radar.” He acknowledged that he failed to do anything earlier in the school year when undisputedly violent anti-Semitic posters were posted outside of the school in locations that could be seen from her children’s classrooms.

**b.** A ninth-grader faced bullying and taunting after his parent reported anti-Semitic incidents at BHS to the school and to the District. On a public and widely circulated social media post, an upper-level high school student targeted the Jewish ninth-grader, calling him a “dumbass” who is “blatantly lying cuz he loves genocide that much.” This message was then re-posted by other BHS students and received countless views.

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<sup>5</sup> See Title VI Complaint at 21-23.



The student’s parent informed the school immediately, but BUSD took no discernable action in response. The student himself, who is Black, previously reported feeling safe at BUSD because no one suspected that he was Jewish, now he no longer feels safe at BUSD.

### **3. Lauding of suspended teacher responsible for anti-Semitic harassment.**

Berkeley High School (“BHS”) Art teacher, [REDACTED], who created a hostile environment for Jewish and Israeli students in his classroom, as detailed in the Title VI Complaint,<sup>6</sup> was finally put on leave immediately after dozens of major media outlets, including CNN, reported on the anti-Semitism in the District, including in his classroom. It appears that only media scrutiny motivates the District to take action it is legally required to take.

After [REDACTED] was placed on leave, posters were tacked on walls all over the high school building with an image of [REDACTED] and the caption “Bring [REDACTED] Back.”

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<sup>6</sup> February 28, 2024 Title VI Complaint against BUSD (“Title VI Complaint”) at 7-10.

One parent wrote to the principal on March 18, 2024:

This past Friday, [my son] came home with a sign he tore off a wall at school. The sign read: “Free [REDACTED].” He tells me these are plastered all over the school. So now, my son has to see these signs everywhere, reminders of the torment he experienced in class, and indications that the school community is siding with his tormentor, the teacher who was unabashed in his viewpoint that Zionism (i.e. the idea of Jewish self-determination), should be met with violence. Imagine for a minute, a teacher has been accused of anti-black racism in the classroom, or sexual misconduct toward a student, and later goes on leave, and afterward, the school is littered with signs expressing solidarity with that teacher. Would that be OK?

The principal did not address the inappropriate posters in his response. In fact, he had just sent “shoutouts” to all students and faculty, praising [REDACTED].

#### **4. Vilification of parents who have raised civil rights claims.**

A group of BUSD teachers, calling themselves “[REDACTED] [REDACTED] [REDACTED]” wrote an inflammatory and divisive letter to the school board after the Title VI Complaint was filed, asserting, e.g., that “a small group of parents, with ties to Israel, have taken this as an opportunity to shamefully conflate the advocacy for Palestine with antisemitism,” “[t]he ADL is known as ‘Israel’s attack dogs’ in the US,” and “[w]e stand with our colleague [REDACTED] and all of our fellow educators who speak truth to power.”

These teachers characterized parents who reported incidents of anti-Semitism at BUSD as “people with strong pro-Israel agendas,” “extreme” community members and “oppressors,” and labeled their efforts to protect their own and their children's civil rights as “part of the Zionist playbook.”

They added that “[u]nder no circumstances should the district adopt the IHRA working definition of Antisemitism,” which is the international gold standard for defining anti-Semitism. Of course, the district need not adopt the standard, but must accept the fact that federal agencies including OCR must consider IHRA when investigating allegations of anti-Semitism.<sup>7</sup>

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<sup>7</sup> See Title VI Complaint at 23.

**5. Increasing use of anti-Israel propaganda in the classroom.**

a. During a cooking lesson on Palestinian food, a seventh-grade teacher at King Middle School forced her students to listen to a podcast that demonized Israel and the Jews, included false information and presented a libelous narrative about Israelis “stealing” land and “appropriating” recipes.<sup>8</sup>

According to the podcast,

Throughout its history, Israel has either fabricated, annexed, or reconstructed both surface and deep cultural elements through ... falsehoods, myths, and fables. Unlike the conventional slow and organic development of culture, Israeli surface culture came prepackaged by appropriating those very elements from the Age Old through Palestinian culture. ... In 1948, Israel ethnically cleansed Palestine of all non-Jewish Palestinians, took over their land and brazenly claimed Palestinian culinary treasures like hummus, falafel, babaganoush, tabbouleh. . . .

[T]he Zionist movement [is] being predicated on erasing the history of the rich heritage of Palestine's culture and its people. . . . But this appropriation of food in both the physical and cultural ethnic cleansing of Palestine, this didn't start on October seventh. The slow ethnic cleansing of Palestine has been going on for over seventy-six years, and the stealing and claiming of Palestinian food as Israeli is intrinsically a part of that.

The lesson not only fails to include the Israeli perspective as school rules require, it effectively erases Jewish identity by denying the millennia-long existence of Jews and Jewish culture in the region, long before the establishment of the modern Jewish State.

When parents complained, the school failed to respond, either to discipline the teacher or provide further instruction to the children the teacher tried to indoctrinate.

This type of propaganda not only demonizes and damages the Jewish and Israeli students in the class, it instills a hatred of Israel and Jews into all students, perpetuating the cycle of anti-Semitic hostility throughout the District.

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<sup>8</sup> Podcast: <https://omny.fm/shows/it-could-happen-here/food-as-resistance>

b. On March 14, 2024, a BHS teacher, [REDACTED] posted political propaganda in her classroom including a QR code for a Gaza Genocide Action Toolkit, which (inter alia) accuses Israel of genocide and tells readers to support the Boycott, Divest, and Sanction movement against Israel, “make sure everyone knows that Israel is mass murdering Palestinian families with our tax dollars,” and tell congress members who support aid to Israel that “they have blood on their hands”; it also defines the ADL as “a right-wing organization that uses inflammatory, racist rhetoric to mislead the public, cover up Israel’s war crimes, and smear activists for Palestinian rights.”<sup>9</sup>

c. Immediately after the Title VI Complaint was filed, Ethnic Studies teachers at BHS began presenting unapproved, biased, and anti-Semitic propaganda on Israel and Palestine in the classroom that further marginalized Jewish and Israeli students on the basis of their identity. Despite grave parental concerns which were repeatedly expressed to the BUSD administration, BUSD permitted teachers to present discriminatory “lessons” over a course of days and reinforced the teachers’ efforts to keep the materials hidden from parents by refusing to provide them to parents who asked for them—and are entitled to see them under state law.

A “Vocab[ulary] List” (Exhibit A) that teachers gave the students is illustrative:

- “Anti-Zionist,” a term referring to those who do not believe that the state of Israel should exist, is defined as a person who “believe[s] in a future where all people on the land live in freedom, safety and equality.”
- The terrorist group Hamas, which slaughtered, raped and brutalized over 1200 civilians in Israel on October 7, 2023 was defined as an “Islamic Resistance Movement.”
- Hamas’ brutal acts of terror are reframed as “armed resistance.”
- The list includes terms like “apartheid,” “ethnic cleansing,” “occupation,” and “settler colonialism,” which are commonly used to demonize Israel.

## **6. Pro-Hamas Walkouts, Postering, and Flags.**

On March 13, 2024, a “BUSD for a Ceasefire in Palestine” Walkout, promoted by teachers, took place during school hours at BHS. School resources and facilities were used to organize the Walkout and staff attended along with students. A BHS teacher promoted the Walkout with a poster on her classroom wall.

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<sup>9</sup> QR Code Link:

<https://docs.google.com/document/d/1hpHkM9KIH5Yn3xq7nk9xfPtIkWZDbIWnCKD8xt5DBx0/edit>



After the Walkout, the principal of BHS sent “shoutouts” to the entire school community, praising teachers and students for organizing and participating in the Walkout.

While posters displaying anti-Israel propaganda and promoting anti-Semitism are left untouched, posters condemning antisemitism and supporting Israel’s right to exist are ripped down from the hallways of BHS without investigation or consequences.





Finally, a Palestinian flag remains hanging in the window of a school office, long after a parent alerted the superintendent and school board on March 13.

### **7. BUSD's failure to meet its legal obligations.**

Through all of this, BUSD remains unmoved, unabashedly shirking its legal duty under Title VI to end the harassment and redress the hostile environment that is interfering with pupils' ability to participate fully in the educational opportunities that BUSD is required to provide to all students. One reason for the failure to act has recently come to light. ██████████ the BUSD investigator presently charged with investigating bias complaints, including claims of bias against Jewish and Israeli students, has herself exhibited bias, "liking" a social media post condemning Israel and accusing Jews of "McCarthyism." Countless complaints of anti-Semitic harassment sent to her for review have gone unanswered and ignored for months.



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**8. Anti-Semitic Hostility at School Board Meetings.**

Recent school board meetings have devolved into vicious attacks on Berkeley Jewish parents by BUSD faculty members shouting defamatory lies and anti-Semitic tropes about Jews. At a March 20, 2024 school board meeting, the crowd shouted “BULLSHIT!” when a parent shared about anti-Semitic bullying of her son and of other students who were called “kikes” and “dirty Jews.” People laughed and jeered at her, and someone shouted, “Zionist Nazi Bitch!” Not only was the school board present when this happened, but the parent also emailed the administration about these events, yet the administration failed to respond to the parent or to take any action to address the virulent anti-Semitism.

**III. Conclusion**

In light of the foregoing, we reiterate our request for OCR to initiate an investigation into BUSD and for mediation pursuant to Section 201(a) of OCR’s Case Processing Manual.

Respectfully submitted,



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# EXHIBIT A

Name: \_\_\_\_\_

<b>VOCAB WORDS</b>	<b>Definitions</b>
Jewish	A person who was born to a Jewish mother or has gone through the conversion process, was adopted by a Jewish family or married into a Jewish family and converts to Judaism, is considered a Jew. Some people practice the religion and are religious Jews. Some are ethnically or culturally Jewish because their family is Jewish, but they don't practice the religion.
Jerusalem	This place is Judaism's holiest city, and is also holy to Christianity and Islam.
Muslim	A person who submits to the will of God and accepts Islam and all its tenets.
Nakba	This word means "catastrophe" in Arabic and describes the mass displacement and dispossession of Palestinians during the 1948 Arab-Israeli war.
Genocide	Any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: <ul data-bbox="792 210 982 1291" style="list-style-type: none"><li>• Killing members of the group</li><li>• Causing serious bodily or mental harm to members of the group</li><li>• Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part</li><li>• Imposing measures intended to prevent births within the group</li><li>• Forcibly transferring children of the group to another group</li></ul>
Antisemitism	Discrimination, targeting, violence, and dehumanizing stereotypes directed at Jews because they are Jewish.

Name: \_\_\_\_\_

Write the words from the Word Bank below	Definitions
Arab	A group of people who speak Arabic as their first language; they are united by culture and by history.
Anti-Zionist	People who are opposed to the idea and practice of Zionism. They believe in a future where all people on the land live in freedom, safety and equality.
Apartheid	The racial segregation policies embraced by the white minority government in South Africa, which dictated where South Africans, on the basis of their race, could live and work, the type of education they could receive, and whether they could vote.
HAMAS (the acronym for Harakat al-Muqawama al-Islamiya (Islamic Resistance Movement))	Many nations consider this group a terrorist organization. It has been leading armed resistance against Israel for decades. It also controls one of the two major political parties in Palestine.
Ethnic cleansing	The systematic forced removal of ethnic, racial, or religious groups from a given area, with the intent of making a region ethnically the same (homogeneous).
Zionism	The movement of some Jewish people to Israel based on the idea that Jews are entitled to a homeland in the Land of Israel. Theodore Herzl, the 'father of modern Zionism,' formally organized the Zionist movement in 1897.
Holocaust	The genocide of approximately 6 million Jews in Germany, by the Nazi regime in death camps.
Israeli Settlements	Communities of Jews who have been moving to the West Bank since it came under Israeli occupation in 1967.

Write the words from the Word Bank below	Definitions
Gaza	This area in Palestine is one of the most densely populated places in the world. About 33 percent of its Palestinian population live in United Nations-funded refugee camps. It is also home to about 5,000 Jewish settlers.

Name: \_\_\_\_\_

Palestinian	Belonging to or relating to Palestine or its people.
Balfour Declaration	The formal statement of British support for "the establishment in Palestine of a national home for the Jewish people."
United Nations (UN)	An international organization founded in 1945. Currently made up of 193 Member States, it is guided by the purposes and principles contained in its founding Charter. It has evolved over the years to keep pace with a rapidly changing world.
Israeli	Belonging to or relating to Israel or its people.
Partition Plan	A plan that was proposed by the United Nations, which recommended a partition of Mandatory Palestine at the end of the British Mandate. On 29 November 1947, the UN General Assembly adopted the Plan as <b>Resolution 181 (II)</b> . The resolution recommended the creation of independent Arab and Jewish States and a Special International Regime for the city of Jerusalem. 56% of the land went to the Jewish state despite the Palestinian Arab population numbering twice the Jewish population. The Arab Higher Committee, the Arab League and other Arab leaders and governments rejected it on the basis that in addition to the Arabs forming a two-thirds majority, they owned a majority of the lands. They also indicated an unwillingness to accept any form of territorial division, arguing that it violated the principles of national self-determination in the UN Charter which granted people the right to decide their own destiny. They announced their intention to take all necessary measures to prevent the implementation of the resolution. Subsequently, a civil war broke out in Mandatory Palestine and the plan was not implemented.

	Definitions
Write the words from the Word Bank below	
West Bank	The territory west of the Jordan River, which Israel captured from Jordan in its defensive 1967 War. About 2.2 million Palestinians live there together with about 400,000 Israeli settlers — including those who live in East Jerusalem. Currently 59 percent of the West Bank is officially under Israeli civil and security control. Another 23 percent is under Palestinian civil control but Israeli security control. The remainder of the territory is governed by the Palestinian National Authority — although such areas (are often) subject to Israeli control.

Name: \_\_\_\_\_

<p>Settler Colonialism</p>	<p>A system of oppression based on genocide and colonialism, that aims to displace a population of a nation (oftentimes Indigenous people) and replace it with a new settler population. It is a system of power perpetuated by settlers that represses Indigenous people's rights and cultures by erasing it and replacing it by their own. It is a system of oppression based on the theft and exploitation of lands and resources that belong to the Indigenous people of those lands. History and current conflicts have shown that this ongoing system of oppression is mainly based on racism and white supremacy. Oftentimes, it is Eurocentric: it assumes that Europeans and their values are superior to other Indigenous cultures, and that therefore it is legitimate to destroy Indigenous people's rights by stealing their lands and erasing their traditions. (Example: The United States came into being as Settler Colonial Nation)</p>
<p>Kibbutz</p>	<p>A communal settlement in Israel in which all wealth is held in common and profits are reinvested in the community. Meals are prepared and eaten communally. Members have regular meetings to discuss business and to take votes on matters requiring decisions. Jobs may be assigned by rotation, by choice, or by skill.</p>
<p>Occupation</p>	<p>A situation in which the military of a foreign government goes into an area or country and takes control of it.</p>
<p>Intifada</p>	<p>This word means "Uprising" in Arabic. There were two Palestinian uprisings against Israel, the first in the late 1980s and the second in the early 2000s.</p>
<p>One State Solution</p>	<p>This proposed solution would merge Israel, the West Bank, and the Gaza Strip into one big country. It comes in two versions. One, favored by some leftists and Palestinians, would create a single democratic country. Arab Muslims would outnumber Jews, thus ending Israel as a Jewish state. The other version, favored by many on the Israeli right, would involve Israel annexing the West Bank and either forcing out Palestinians or denying them the right to vote. Virtually the entire world, including most Israelis, rejects this option as an unacceptable human rights violation.</p>
<p>Two State Solution</p>	<p>This proposed solution would create an independent Israel and Palestine, and is the mainstream approach to resolving the conflict. The idea is that Israelis and Palestinians both want to have their own countries. Israelis want a Jewish state, and Palestinians want a Palestinian one. Because neither side can get what it wants in a binational state (two nation state), the only possible solution that satisfies everyone involves separating Palestinians and Israelis.</p>
<p>Islamophobia</p>	<p>This form of hatred, fear, and/or prejudice is directed toward Islam and Muslims. It results in a pattern of discrimination and oppression.</p>

Name: \_\_\_\_\_

**Vocabulary Sources:**

- <https://www.merriam-webster.com/dictionary/kibbutz>
- <https://docs.google.com/document/d/18beH8OJ390wK-4jhhbYnz2uClqeNUObvaYVVRBR6n4Xk/edit>
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