

August 6, 2024

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Re: Civil Rights Violations at Fulton County School District

## **I. Introduction**

On October 7, 2023, Hamas carried out a terrorist attack on innocent Israeli civilians, including infants, children, elderly, and infirm Israelis as well as young people attending a music festival who were massacred, tortured, and kidnapped. Most people across the nation were horrified, but in the Fulton County School District (“FCSD” or “the District”), the horrors seem to have poured gasoline on the flame of the anti-Semitism already festering.

While there had already been serious complaints in the past against the District for its failure to address anti-Semitic bullying and harassment, since October 7, Jewish and Israeli students have been routinely subjected to frequent incidents of bullying and harassment by their peers--in hallways, in classrooms, on buses, and in school yards--simply due to their Jewish identity or Israeli national origin, while their teachers and administration, well-aware of the incidents, have either tacitly condoned it, or refused to take any real action to protect them.

The harassment and bullying have been perpetrated and condoned not only by fellow students but also by teachers and administrators, who have fostered an intense climate of hostility and fear both actively (by teaching propaganda) and by allowing the pro-terror students to act with impunity, harassing Jewish students before, during, and after class, mocking their pain and threatening their families. Parents repeatedly reported the anti-Semitism. But instead of taking responsive action to address the anti-Jewish hostility, FCSD denied the anti-Semitic nature of

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the incidents and/or offered inadequate solutions that were not intended to eliminate the hostile climate. For instance, one Jewish girl who felt physically threatened was told that if she wanted to, she could work from home, but the school did not take steps to ensure that the Jewish student could feel safe attending school in person like other students.

Meanwhile, anti-Semitism in the classroom has been permitted to flourish. The non-Jewish students who remain in the anti-Semitic environments continue to be indoctrinated with anti-Semitic propaganda by adults they trust, and anti-Semitism is normalized to the point that students repeat it, often unaware that they are even being offensive.

The anti-Semitic signs, flags, stickers, tee-shirts, banners and chalking on display at various times throughout the district further darken the tone for Jewish and Israeli students, often by erasing or denying the Jewish people's ancestral connection to Israel, and dehumanizing the Jewish and Israeli students in the eyes of their classmates, thereby intensifying the hostile climate. The cumulative effect of the anti-Semitic harassment and bullying by teachers and peers, anti-Semitic propaganda on schoolhouse walls, retaliation against those reporting anti-Semitism and a complete failure of FCSD to address the anti-Semitic climate, is the increased bullying, shunning and marginalization of Jewish and Israeli students. The hostile environment for Jewish students has become intolerable, and is ultimately denying Jewish students the full benefits of their federally-funded education and interfering with Jewish students' ability to access their education.

This complaint is being filed on behalf of The Louis D. Brandeis Center for Human Rights Under Law (the Brandeis Center or LDB), Jewish Americans for Fairness in Education (JAFE) and the National Jewish Advocacy Center (NJAC) (collectively, the Complainants). JAFE is a national membership organization affiliated with the Brandeis Center. Among JAFE's members are numerous students who attend school and live in the District, along with parents and other stakeholders. They have asked the Brandeis Center to file this complaint because the District has repeatedly failed to respond appropriately to complaints that students were being subject to a hostile environment on the basis of national origin (shared Jewish ancestry). The Office for Civil Rights (OCR) enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin, including shared ancestry or ethnic characteristics, in any program or activity receiving Federal financial assistance from the Department. As a recipient of Federal

financial assistance from the Department, the District is subject to these laws and regulations.<sup>1</sup>

For the foregoing reasons, and as detailed more fully in this Complaint, the Complainants request that OCR initiate an investigation of FCSD.

We further request mediation at the time of filing pursuant to Section 201(a) of OCR's Case Processing Manual, to be followed by an investigation if the mediation is not successful.

## II. Statement of Facts

Already on October 8th, while the dead were still being counted and before Israel had even had a chance to militarily respond, dozens of students at various high schools in the District suddenly began wearing keffiyehs, a symbol of Palestinian resistance, and trying to intimidate Jewish students, including by shouting "Free Palestine" at them and harassing them before, after, and even during class by yelling anti-Israel slogans at them, and cursing at them. The slogan "Free Palestine" is a rallying cry for the eradication of Israel, thereby erasing and denying the Jews' identity as a people with a right to self-determination in the Jews' ancestral homeland. This bullying and harassment contributes to the anti-Semitic hostile environment throughout the District.<sup>2</sup>

Jewish and Israeli students have been targeted on the basis of their Israeli national origin and/or their actual or perceived shared ancestry connected to Israel. In one instance, a high schooler ran up to an Israeli student, cursing him in Arabic and trying to start a physical altercation based entirely on his Israeli national origin and Jewish identity. When the student's parents brought this to the attention of the administration, the principal promised to handle this "seriously" but refused to say how. In one of the District's middle schools, an Israeli child was told by a classmate that "Somebody needs to bomb your country, and hey, somebody already did." A group of hateful middle schoolers removed "I stand with Israel" signs from yards near the school and threw them in a fire pit, while others approached a group of Jewish children and told them that "Jews are stinky." Teachers signaled their own positions on the matter in a variety of ways, including wearing 'Free Palestine' pins and Palestinian pendants that erase the State of Israel, and in multiple classes that taught middle school children about the conflict from only one (strongly anti-

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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).

<sup>2</sup> The behavior also violated numerous provisions of the [Fulton County Schools 2024 – 2025 Student Code of Conduct](#), including but not limited to: 21a.IV; 6b.IV; 19b.III; 22a.II; 20a.II; 6c.I; 5b.III; 5e.III; 6a.III; and 6f.II.

Zionist) perspective. In one instance, on October 16, 2023 – a mere nine days after Hamas’ barbaric attack on Israeli civilians – men, women, children and the elderly, a 2nd grade teacher at State Bridge Crossing Elementary told her class – which includes two Israeli students – that the war was Israel’s fault. When parents complained, the school said they would “review procedures” with the teacher. The parents of bullied and harassed Jewish children made the District aware of all of these incidents of bullying and harassment, but the District failed to address the incidents or the hostile environment they created.

A non-exhaustive list of other instances included: a student approaching several Israeli and Jewish girls and miming shooting at them with a gun (including making gunshot sounds); a senior threatening a Jewish freshman who posted an Israeli flag online that he would look for him at school, and a student asking a 5th grade girl if she was Israeli and then telling her how much she hates Jews and Israelis and asserting they all should be killed. The frightened girl’s parents reported the threat to the school but no action was taken. In the days that followed, the emboldened student kept approaching the Israeli girl and happily describing all the atrocities that Hamas had committed in Israel, including be-heading babies, butchering children and so on.

Administrators at the various individual schools where these events were occurring, as well as the school system itself, were notified at a school board meeting and a follow up meeting that their Jewish student population needed help, but they failed to provide it. In one instance, for example, on November 13, 2023, a Jewish girl called her mother from school and said that a Palestinian boy was repeatedly harassing her and that she did not feel comfortable. The mother instructed her to go immediately to the principal, which she did, and the mother herself personally went down to the school. The principal’s suggestion was not to stop the harassment, but rather to tell the girl and her mother that if she does not feel comfortable in the school building, she could go home and work online.

From October 10 to October 24, Jewish parents continued to complain to the school that their children felt distracted, scared, and unsafe by these intentional provocations based on their Jewish and Israeli identities, but the District took no action to protect them. On October 25, a group of concerned parents elevated the issue to the Fulton County Board of Education which eventually resulted in a meeting on October 30, 2023 with Fulton County School District leadership. The parents and stakeholders met with administrators to discuss both the verbal and physical intimidation that their children were being subjected to on a near daily basis by other students cosplaying as members of Hamas, and the school system’s failure to protect Jewish children based on their misunderstanding of the First Amendment.

FCSD misunderstood and mischaracterized the problem faced by Jewish and Israeli students in its schools as one involving free speech, rather than as the unlawful anti-Semitic harassment and discrimination of Jewish and Israeli students on the basis of their Jewish shared ancestry and Israeli national origin. Indeed, the First Amendment does not protect against intimidation, threats or assault – all of which Jewish and Israeli students within the FCSD have experienced. An attorney who joined the October 30 meeting by phone explained that the school district had a legal obligation to address the intimidation and harassment and that under the relevant legal standard of *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), the Constitution allows schools to restrict speech that will “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school” or that “inva[de]... the rights of others.”<sup>3</sup>

At the October 30 meeting, the school repeatedly insisted on pretending that the keffiyeh scarves children had started wearing after October 7, some with anti-Semitic phrases written on them, were nothing more than ‘soccer’ apparel based on their black and white coloring. In fact, the keffiyeh has become a symbol of solidarity with the cause of Palestinian “resistance” by any means, and has famously been worn by numerous terrorists from Yasser Arafat to Leila Khaled. When students suddenly start wearing keffiyehs around school right after a terrorist attack, with phrases like “Jerusalem is Ours” embroidered on, that action is clearly meant to intimidate the Jewish students by sending a message of support to the perpetrators of the Al Aqsa Flood terror campaign. Brandishing the phrase “Jerusalem is Ours” on a keffiyeh that resembles those worn by terrorists, is, therefore, understood by Jews and Israelis as a threat. Despite the fact that the school district was aware of the threatening and harassing conduct, it chose to say nothing in response to the anti-Semitism that erupted in its schools after the October 7 terrorist attacks.

Both during the meeting and in follow up conversations afterward, the parents and their representatives also offered to arrange free anti-Semitism training, to be scheduled at the Districts’ convenience, to help teachers and administrators understand the issues, or identify what anti-Semitism is and how it manifests. They offered three different organizations for the District to choose from-World Jewish Congress, Israeli American Council, and National Jewish Advocacy Center-all of whom had volunteered their time to do it. The school did not accept the generous offer and to date has chosen not to offer any anti-Semitism training at all. On November 12, 2023, over 75 students and parents from the District signed an email to the Superintendent of the District, [REDACTED], that summarized both the

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<sup>3</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512-13, 89 S. Ct. 733, 740, 21 L. Ed. 2d 731 (1969).

verbal and physical intimidation that they and/or their children were being subjected to on a near daily basis on the basis of their Jewish and Israeli identities as well as their previous failed efforts to get the District to take any action. Again, the District chose to ignore the communication. When questioned later on, administrators claimed that they were unaware of any conduct that would constitute a violation of the conduct code. On December 5, 2023, a group of concerned parents and community members addressed the School Board at a meeting and responded directly to that issue. They listed several of the anti-Semitic incidents and referenced the roughly 17 specific conduct code violations they represented, with provisions keyed to each incident, so that there would be a public record of the response. Again, the District chose to do nothing while the harassment continued, unabated.

As a result of the lack of gravity with which the District has handled complaints of anti-Jewish and Israeli origin discrimination thus far, the bad actors have only been emboldened. The Jewish students in these schools remain consistently harassed, while the other non-Jewish students who remain in the anti-Semitic environment continue to be indoctrinated with anti-Semitic propaganda by their peers, see it tolerated by adults they trust, and thus anti-Semitism is normalized. The cumulative effect has created and sustained a hostile environment for Jewish students which has become intolerable, and ultimately interferes with Jewish students' ability to access their education. Jewish students are afraid at school, feel a need to hide their Jewish identities, and are limited in their ability to participate fully in the same educational opportunities as non-Jewish students.

On March 5, 2024, after repeated requests, a Fulton County School District parent, along with a representative from the World Jewish Congress, were finally given a meeting with Superintendent [REDACTED]. Rather than express his understanding and sympathy for the children and their families in distress, [REDACTED] denied the anti-Semitism they had experienced, without regard for the District's legal obligations. On information and belief, [REDACTED] expressed his approval of current school textbooks for AP Art that erase and deny the existence of the State of Israel by replacing the map of Israel entirely with the State of Palestine. [REDACTED] also downplayed the plight of Jewish and Israeli students in his schools by dismissing and denying the evidence of anti-Semitism that was presented to him. For example, [REDACTED] said there were only a couple of students wearing offensive materials, despite the numerous pictures, posts, and other evidence to the contrary. When asked to explain why he ignored the 75+ parents who had written to him directly to report their concerns about anti-Semitism and incidents their children experienced, [REDACTED] claimed he did not check his email. Furthermore, in contradiction to the District's claim that the First Amendment prevented it from intervening to address anti-Semitism in its schools, [REDACTED]

conceded that if Muslim parents had complained about students wearing Israeli Defense Forces sweatshirts, the school would have banned the attire.

In early March, a group of concerned parents brought their concerns to the attention of the Georgia State School Superintendent, [REDACTED]. On March 13, 2024, [REDACTED] informed their representative that the Georgia Department of Education had discussed the issue of anti-Semitism within the Fulton County School District, and that Fulton County had stated that they had removed the inappropriate flags, maps, and headgear. Furthermore, according to [REDACTED], the District had committed to meeting with Jewish students to discuss concerns and had also extended this offer to Jewish families and leaders within the community. [REDACTED] also confirmed that he had the authority to visit the school at his discretion, and that Fulton County administrators had expressed their willingness to address all such concerns regarding anti-Semitism.

While this communication was met by the complainants with much hope that real change would be made, unfortunately none of the actions spelled out have actually occurred. The inappropriate flags and maps are still put on display and in educational materials, and the school has not met with the affected families of Jewish schoolchildren. In fact, the anti-Semitic incidents have continued.

On March 29, 2024, the school closed its eyes when parents who volunteered to help with the children's passbooks during international day at the school, took the opportunity to fill them with materials the Jewish students found threatening, including stickers with fists symbolizing 'the [Palestinian/anti-Israel] resistance.' When parents complained, the school issued a bland statement and ripped out the pages from anyone who wanted, but there was no discipline meted out, which only empowered the anti-Israel parents and students. In April, shortly before spring break, a similar incident occurred when Creek View Elementary School handed out gift baskets to the children. The school allowed a group of parents to slip in Free Palestine tee-shirts and stickers, which Jewish and Israeli students and parents understood as a call for the eradication of the State of Israel and a denial of the Jewish people's right to self-determination in their ancestral homeland. Then, just after spring break, students were caught on camera in a video that went viral on the internet, chalking antisemitic pro-terror statements ("From the River to the Sea" - another statement that calls for the eradication of the State of Israel) and symbols on school walls. [REDACTED] decided that they were not, in fact, anti-Semitic, and so there was no discipline. The students then used the video to raise money for the Palestine Children's Relief Fund, an organization credibly linked to Hamas.<sup>4</sup>

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<sup>4</sup> NGO Monitor, Palestine Children's Relief Fund, ("PCRf also [partners](#) with Taawon (Welfare Association). The Welfare Association is [funded](#) by the Islamic

On April 19, 2024, during cultural night at Finley Oaks Elementary School, five Israeli mothers of students enrolled at the school, were tabling with their children when they were verbally accosted and abused by a group of Palestinian parents, led by an angry father. The Israeli mothers were yelled at, called names including “Nazis”, and spat at in front of their children and the entire student body. The mothers and their children were shocked, embarrassed, and genuinely fearful for the physical safety of themselves and their children. As the Israeli mothers began to shake and cry, the leader of the Palestinian group that had confronted them walked back and spit at them. After the Israeli victims complained to a school safety officer, the guard initially went over and spoke to the man who had spat at them; but the officer ultimately walked back to the table and told the women that the man seemed nice, so he was not going to do anything about what happened. The women filed a police report ( [REDACTED] ).

In the meantime, the environment in Fulton County schools has continued to deteriorate for Jewish and Israeli students. Despite [REDACTED]’ assurances, students still walk around in mock terrorist garb and try to intimidate the Jewish students. Some Jewish students, as young as six years old, have been told, during class and with teachers present, that Israel is entirely at fault for this war, and at one school (Innovation Academy,) students planned a pro-Palestinian walkout which the administration was aware of and tolerated. Symbolically, while many other days and months are recognized and commemorated by Fulton County, Holocaust Remembrance Day and Jewish Heritage Month are not.

In May, during the last week of classes at Chattahoochee High School, the FCDS administration told teachers in the 10<sup>th</sup> grade that they had to teach a unit on the Israel/Palestine conflict using certain predetermined materials. Those materials were so anti-Semitic and incorrect that one teacher apologized and told the Jewish parents she was genuinely uncomfortable using them but had no choice.<sup>5</sup> Another teacher confirmed that the specific material to be shown was ordered by Fulton County. An entire grade has now been indoctrinated with anti-Israel and anti-Jewish propaganda that they have come to believe. For example, as reflected in the Alpharetta Yearbook, the students described a big part of their senior year being affected by the war that broke out between Hamas and Israel “over control of the Gaza Strip.” The war did not break out over control of the Gaza Strip; it broke out after Hamas committed the deadliest terrorist attack in Israel’s history, and kidnapped innocent Jewish civilians, including women and babies, many of whom

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Development Bank that has [transferred hundreds of millions of dollars to support Hamas](#)”).

<sup>5</sup> Among them, for example, this video:

<https://www.youtube.com/watch?v=iRYZjOuUnlU>.



Hamas continues to hold as hostages to this day. But the Fulton County school children have been taught differently.

### **III. For many Jewish and Israeli students at FCSD, Zionism is an integral component of their Jewish ethnic identity**

Guidance issued in 2004 by OCR and in 2010 by OCR and the Department of Justice (DOJ) extended protections under Title VI to cover discrimination against Jews on the basis of their “actual or perceived shared ancestry or ethnic characteristics.”<sup>6</sup> For many Jews, including many Jewish students in FCSD, Zionism is an integral component of Jewish ethnic identity. 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>7</sup>

For many Jews, including many Jewish students at FCSD, 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. Today, Jews who define themselves as part of a people whose history and ancestral heritage is rooted in the Land of Israel, are disparaged

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<sup>6</sup> See Russlynn Ali, “Dear Colleague Letter at 2–3, U.S. Dep’t of Educ. Office for C.R. (Oct. 26, 2010) [hereinafter 2010 Dear Colleague Letter], <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (explaining that a university must take “prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.”); *see also* 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 (Sep. 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>7</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>.

as “Zionists.” Harassing, marginalizing, demonizing, and excluding these Jewish 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. Indeed, UNESCO has cautioned that “Jew” and “Zionist” today are often used interchangeably in an attempt by anti-Semites to cloak their hate.<sup>8</sup>

When Jewish and/or Israeli students at FCSD are subjected to a hostile environment based on their connection to the Jewish people’s ancestral homeland, Israel, they are being targeted and harassed on the basis of their “actual or perceived shared ancestry or ethnic characteristics” in violation of Title VI.<sup>9</sup>

#### **IV. Jewish and Israeli students at FCSD are being subjected to anti-Semitic bullying and harassment**

The International Holocaust Remembrance Alliance (“IHRA”) is an intergovernmental organization focused on Holocaust education, research, and remembrance. In the early 2000s, IHRA’s experts resolved to take a leading role in fighting anti-Semitism, and developed a working definition. It was formally accepted by the then 31 countries in the IHRA in 2016, and since that time, over 1100 separate governments, NGOs, and other key institutions have adopted it as well. The definition has been endorsed by a growing number of world leaders, including the UN secretary-general, U.S. Presidents of both parties, and is used by several departments within the US federal government. Under Executive Order 13899, the International Holocaust Remembrance Alliance Working Definition of Antisemitism (the IHRA Definition) must be considered by all executive departments and agencies charged with enforcing Title VI.<sup>10</sup>

As the IHRA Definition states, criticism of Israel similar to that leveled against any other country is not anti-Semitism. But demonizing the Jewish State, calling for its destruction, blaming Jewish students for the actions of the Israeli government, denying the Jewish people the right to self-determination and/or subjecting Israel to double standards are classic earmarks of anti-Semitism. The “Contemporary Examples of Anti-Semitism” identified by the IHRA, include, *inter alia*, the following:

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<sup>8</sup>See UNESCO & OSCE, Addressing Anti-Semitism Through Education: Guidelines for Policymakers, 21, 24, 82–83 (2018),

<https://unesdoc.unesco.org/ark:/48223/pf0000263702.locale=en>.

<sup>9</sup> Lewin, *supra* note 7;

<sup>10</sup> See Executive Order 13899 Section 2(a)(i)-(ii).

- 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 it 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.<sup>11</sup>

The bullying and harassment that has infected FCSD since October 7 falls within the IHRA Definition of antisemitism as discussed more fully below.

The OCR's November 7, 2023 Dear Colleague Letter states

As we witness 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, the fulfillment of school communities' federal legal obligations to ensure nondiscriminatory environments have renewed urgency.

. . . .

All students, including students who are or are perceived to be Jewish [and] Israeli. . . as well as students who come from, or are perceived to come from, all regions of the world, are entitled to a school environment free from discrimination based on race, color, or national origin.<sup>12</sup>

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<sup>11</sup> International Holocaust Remembrance Alliance (IHRA), *Working Definition of Antisemitism*, <https://holocaustremembrance.com/resources/working-definition-antisemitism>.

<sup>12</sup> See Catherine E. Lhamon, Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter (Nov. 7, 2023), [hereinafter 2023 Dear Colleague Letter], <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>.

The “alarming rise in disturbing antisemitic incidents and threats” to Jewish and Israeli students in P-12 schools is likewise reflected at FCSD.

## V. FCSD has Violated Title VI

### A. FCSD has allowed a hostile environment to develop and flourish.

Title VI protects Jewish and Israeli students from harassment that creates a hostile environment.<sup>13</sup> Guidance issued by the Department of Education’s Office for Civil Rights (OCR) and the Department of Justice in 2004, 2010, 2017 and 2023 specifies that Title VI covers discrimination against Jews on the basis of their “actual or perceived shared ancestry or ethnic characteristics.”<sup>14</sup> According to Executive Order 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>

In January 2023, the Department of Education affirmed its commitment to the Executive Order, which incorporates the IHRA Definition when it issued a factsheet on discrimination based on shared ancestry.<sup>16</sup> The Department re-affirmed its

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<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”).

<sup>14</sup> See 2023 Dear Colleague Letter; See also Fact Sheet: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics (Jan. 4, 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf>; Know Your Rights: Title VI and Religion, U.S. Dep’t of Educ. Office for C.R., January 17, 2017, [hereinafter Know Your Rights: Title VI and Religion], available at <https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>. See also “2010 Letter Re Title VI and Religiously Identifiable Groups” and 2004 Dear Colleague Letter, *supra* note 6.

<sup>15</sup> See 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 of 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> See Statement from U.S. Assistance Secretary for Civil Rights on Title VI Protection from Discrimination Based on Shared Ancestry or Ethnic Characteristics, (Jan. 4, 2023), <https://brandeiscenter.com/statement-from-u-s-assistant-secretary-for-civil-rights-on-title-vi-protection-from-discrimination-based->

commitment to the Executive Order in May 2023, when it directed university administrators to review the Questions and Answers on Executive Order 13899 as a resource in OCR guidance issued with the White House National Strategy on Countering Anti-Semitism.<sup>17</sup> A similar list of resources including the Questions and Answers on Executive Order 13899 was again included in OCR's guidance issued on November 7, 2023.<sup>18</sup>

- 1) The harassing conduct has created a hostile environment.
  - a. The harassing conduct was severe and pervasive.

“OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome conduct based on shared ancestry or ethnic characteristics that, based on the totality of circumstances, is subjectively and objectively offensive.”<sup>19</sup> OCR has also explained that “harassing conduct may take many forms...which may include the use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating.”<sup>20</sup> □

The harassing conduct experienced by FCSD students included many verbal acts by both teachers and students, including name calling, as well as graphic and written statements posted on walls, inserted into student passbooks and handed out in student gift baskets. According to OCR's 2010 Dear Colleague letter,

[h]arassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. 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>21</sup>

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[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>17</sup> See 2023 Dear Colleague Letter; See also Statement from U.S. Assistance Secretary for Civil Rights on Title VI Protection from Discrimination Based on Shared Ancestry or Ethnic Characteristics, *supra* note 16.

<sup>18</sup> See 2023 Dear Colleague Letter.

<sup>19</sup> 2023 Dear Colleague Letter.

<sup>20</sup> 2010 Dear Colleague Letter, p. 2.

<sup>21</sup> 2010 Dear Colleague Letter.

The conduct described herein was severe and pervasive. The sheer number of students who have complained of anti-Semitic hostility at school, both privately and publicly at school board hearings, highlights the pervasiveness of the problem throughout the district. Among the many concerns here are the District's dismissal and/or failure to properly record and deal with reported incidents of harassment directed to the students; its failure to address offenders effectively, including through discipline and its enforcement; its failure to timely implement a safety plan for the students, its failure to maintain adequate documentation of reported incidents of harassment, and its leadership's admitted double standards. Nor is this the first time that the District has had an anti-Semitism problem. Just a few years back, two Jewish students in the Autrey Mill Middle School were harassed so badly and for so long (eighteen months) that one of them [REDACTED]. When repeatedly confronted with the facts, the District gaslighted the students and their parents, calling swastikas peace symbols, for example, and brushing off openly antisemitic graffiti as just kids being kids. Eventually, when the evidence became overwhelming and too hard to deny, the District agreed to make some small changes. Therefore, the District should have been more attuned to this recurring problem.

Considering the "totality of circumstances," it is clear that the anti-Semitic harassment at FCSD was severe and pervasive, and created a hostile environment. The cumulative effect of all the various forms of invidious harassment in the district has created an oppressive and hostile environment for Jewish and Israeli students in the District. The harassment was also not only objectively offensive, but subjectively offensive to countless students in the District. Due to the harassment, bullying and oppressive hostile climate for Jews and Israelis, Jewish and Israeli students have felt marginalized, attacked, frightened, isolated, alienated, targeted, shunned, ostracized, threatened, panicked and afraid to express their Jewish identity in school.

b. The harassing conduct limited and denied students' access to education.

The harassment experienced by Jewish and Israeli students at FCSD "interfere[d] with or limit[ed]. . . [Jewish and Israeli students' abilities] to participate in or benefit from the services, activities, or opportunities offered by a school."<sup>22</sup> Jewish and Israeli student have been subjected to virulent anti-Semitism at school that has caused severe anxiety and fear, along with feelings of being threatened, marginalized, excluded, alienated, isolated and unsafe. It has been impossible for these students to focus on their studies and benefit from their education while

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<sup>22</sup> 2010 Dear Colleague Letter.



feeling threatened both inside and outside of class.<sup>23</sup> Due to FCSD’s behavior, the Jewish students were blocked from fully participating in and benefiting from school services, activities and opportunities.

c. Harassment was Based on Shared Ancestry.

As discussed above, the harassment experienced by Jewish and Israeli students was based on their shared ancestry connected to the Jewish homeland. Guidance issued in 2004 by OCR and the Department of Justice (DOJ) extended protections under Title VI to cover discrimination against Jews on the basis of their “actual or perceived shared ancestry or ethnic characteristics.” For many Jews, including many Jewish students in the Fulton County School District, Zionism is an integral component of Jewish ethnic identity. The Jewish people’s history, theology, and culture are deeply intertwined with the Land of Israel, and for many Jews, including many Jewish students in the Fulton County School District, expressing support for the Jewish homeland is simply a reflection of the historic fact that the Jewish people’s shared ancestral, religious, and ethnic heritage is rooted in the Land of Israel. The Jews are an ethno-religion indigenous to “Judea” (the historical name of an area in Israel). Harassing, marginalizing, demonizing, and excluding these Jewish 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. When Jewish students in the Fulton County School District are subjected to a hostile environment based on their real or perceived connection to their Jewish homeland, they are being targeted and harassed on the basis of their “actual or perceived shared ancestry or ethnic characteristics” in violation of Title VI.

FCSD is required, by both state and federal law, to consider the IHRA Definition of antisemitism when evaluating complaints of anti-Semitic harassment and discrimination. Under Executive Order 13899, the IHRA Definition must be considered by all executive departments and agencies charged with enforcing Title VI. On January 31, 2024, the State of Georgia officially adopted the IHRA Definition for all of its own state agencies as well, including school districts such as FCSD.<sup>24</sup>

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<sup>23</sup> “A safe environment is a prerequisite for productive learning.” Johanna Lacoë, *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).

<sup>24</sup> H.B.30, 157<sup>th</sup> Gen. Assemb., Reg. Sess. (Ga. 2023), <https://www.legis.ga.gov/api/legislation/document/20232024/221961>.

As the IHRA Definition states, criticism of Israel similar to that leveled against any other country is *not* anti-Semitism. But demonizing the Jewish State, calling for its destruction, blaming Jewish students for the actions of the Israeli government, denying the Jewish people the right to self-determination and/or subjecting Israel or Jewish people to double standards are classic earmarks of anti-Semitism.

The bullying and harassment that has infected the District since October 7 falls within the IHRA Definition of antisemitism. In a Dear Colleague Letter on November 7, 2023, the OCR warned schools that:

As we witness 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, the fulfillment of school communities' federal legal obligations to ensure nondiscriminatory environments have renewed urgency. . . . All students, including students who are or are perceived to be Jewish [and] Israeli. . . as well as students who come from, or are perceived to come from, all regions of the world, are entitled to a school environment free from discrimination based on race, color, or national origin.

The “alarming rise in disturbing antisemitic incidents and threats” to Jewish and Israeli students in K-12 schools is likewise reflected in the Fulton County School District.

- d. FCSD failed to respond promptly and effectively to reports of a hostile environment.

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.”<sup>25</sup> Further, OCR has explained that Title VI can be violated 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>26</sup> And a school district must respond to discriminatory harassment 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>27</sup>

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

<sup>26</sup> See 2010 Dear Colleague Letter.

<sup>27</sup> 2010 Dear Colleague Letter, at 5–6.



FCSD is fully aware of the hostile environment, yet has failed to take prompt and effective steps “reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring.” Georgia’s State Superintendent has admitted that there is a problem, and promised to fix it, but demonstrably has not done so. Countless students and their parents from numerous schools across the District have reported anti-Semitic incidents and shared their concerns about the hostile climate for Jewish and Israeli students, through their emails to the Superintendent, meetings with administrators, and testimony at school board meetings. Despite knowing about it, anti-Semitic propaganda is still allowed to be displayed in school, teachers continue to foster a hostile environment in the classroom and students continue to bully Jewish and Israeli student based on their Jewish ancestry and Israeli national identity. FCSD has taken no discernable action designed to actually put a stop to the harassment, bullying and overt hostility that pervades the school district.

As OCR has further explained,

[T]he school may need to provide 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. A school also may be required 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. An effective response also may need to include the issuance of new policies against harassment and new procedures by which students, parents, and employees may report allegations of harassment (or wide dissemination of existing policies and procedures).<sup>28</sup>

FCSD has not disciplined or put interventions in place to sanction the perpetrators; it has not implemented training for the larger school community to ensure that students, families and school staff can recognize anti-Semitism and know how to respond; FCSD has failed to provide services to Jewish and Israeli students who have been bullied; and FCSD has failed to issue new policies against anti-Semitic harassment or new procedures for reporting anti-Semitic conduct. FCSD has largely ignored reports of anti-Semitism from students and their parents and has failed to recognize and acknowledge the anti-Semitic nature of the harassment by downplaying their pain and suggesting they remove themselves from their classrooms, further marginalizing and punishing the students instead of helping

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<sup>28</sup> 2010 Dear Colleague Letter at 3.

them. The District has therefore failed to fulfill its legal obligation to protect all of its students and ensure a discrimination free learning environment..

## **VI. Suggested Remedies**

For the foregoing reasons, the Brandeis Center and the FCSD Jewish and Israeli families and their children urge OCR to require FCSD's administration to take the following steps to protect its Jewish and Israeli students and to ensure that members of FCSD community are held accountable for engaging in or supporting discriminatory conduct.

- A. 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 FCSD. We strongly recommend that FCSD 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 FCSD students feel unwelcome and unsafe expressing this part of their Jewish ancestral and ethnic identity is contrary to FCSD'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.

FCSD 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 ethnicity, including anti-Semitism that manifests as anti-Zionism. To that end, FCSD will utilize the IHRA Working Definition of antisemitism 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. FCSD encourages the FCSD community to educate itself about the many manifestations of anti-Semitism by reading and studying the IHRA Definition and its contemporary examples.

- B. Ensure that the FCSD community understands and recognizes anti-Semitic discrimination by, without limitation: Incorporating the IHRA working Definition of antisemitism, including its guiding examples, in FCSD's policy manuals related to discrimination ("policy"), consistent with Executive Order 13899 and the values of free speech and academic freedom; and providing training on anti-Semitism and its revised antidiscrimination policies to FCSD 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 FCSD 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.
- C. Enforce its code of conduct, which applies to all students, employees, and faculty members, in a manner that treats all individuals equally regardless of race, color, or national origin, including shared ancestry and country of origin. The school should announce that any member of the community who engages in discriminatory conduct in violation of Title VI and FCSD's code of conduct will be held accountable, including by suspension and expulsion.
- D. Appoint an independent investigator to examine the campus climate for its students, faculty, staff, with specific attention to the climate for Jewish and Israeli members of the FCSD 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 upon the survey and additional analysis.
- E. Create a Task Force comprised of Jewish student leaders and Jewish faculty members that will provide input to the FCSD administration about how best to address and improve Jewish life in FCSD schools, including how to address and ameliorate antisemitic harassment and discrimination based on shared ancestry or ethnicity.
- F. Remove all anti-Semitic posters, banners, flags, images and writings on school property and enforce the prohibition against the display of such items.
- G. Discipline all teachers, students and school staff who engage in anti-Semitic conduct of any kind as appropriate.

- H. Offer to reimburse any students for past counseling, academic, or therapeutic services they obtained as a result of the harassment they experienced based on their Jewish shared ancestry and/or Israeli national origin;

## VII. Request for Mediation

The Complainants request mediation at the time of filing pursuant to Section 201(a) of OCR's Case Processing Manual.

## VIII. Conclusion

The U.S. National Strategy to Counter Anti-Semitism calls on the Education Department, and specifically OCR, as well as schools, to address the increasing problem of "antisemitic expression and acts [that] have...become common at many public and private secondary and elementary schools;" and cites "[r]ecent data show[ing] a nearly 50% increase in antisemitic incidents at K-12 schools."<sup>29</sup> The Strategy further states, "Our schools and campuses must feel and be safe for all people."<sup>30</sup> This has not been the case for Jewish and Israeli students at FCSD, who have been subjected to a hostile climate of harassment, bullying and virulent anti-Semitism on an ongoing basis, which significantly limits their ability to participate in and benefit from services, activities and opportunities offered in the FCSD.

For the foregoing reasons the Brandeis Center, JAFE and NJAC urge OCR to initiate an investigation of FCSD, a recipient of federal financial assistance, for violations of Title VI and the statute's implementing regulations.<sup>31</sup>

Respectfully submitted,



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<sup>29</sup> The U.S. National Strategy to Counter Anti-Semitism, The White House, (May 25, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf>.

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

<sup>31</sup> *See* 42 U.S.C. § 2000d *et seq.*; *see also* 34 CFR §§ 100.3(b)(1)(i), (iv), (vi).