



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

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**January 29, 2024**

**IN RESPONSE, PLEASE REFER TO: OCR Complaint 03231373**

Mr. Dorrell Green  
Superintendent  
Red Clay Consolidated School District  
1502 Spruce Avenue  
Wilmington, DE 19805

Via email: [dorrell.green@redclay.k12.de.us](mailto:dorrell.green@redclay.k12.de.us)

Dear Mr. Green:

This letter is to advise you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed against the Red Clay Consolidated School District (District) in Delaware, alleging discrimination on the basis of national origin. The Complainant, the Delaware Public Education Ombudsman, filed this complaint on behalf of a student in the [redacted content] (Student) at the [redacted content] School [redacted content], and her family. OCR investigated whether the District responded appropriately to complaints that the Student was subjected to harassment by classmates on the basis of national origin (shared Jewish ancestry) during the [redacted content].

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.

During its investigation, OCR reviewed documentation provided by the Complainant and the District, including the School's Student Code of Conduct, witness statements related to the alleged harassment, disciplinary reports, email correspondence, suspension notices, eSchool bullying reports and data regarding other incidents of alleged harassment. OCR also interviewed the Deputy Superintendent, the School Dean, a School Assistant Principal, and three School teachers.

### **SUMMARY OF CONCERNS**

Based on the evidence obtained in its investigation and the applicable legal standard, OCR determined that other students subjected the Student to harassment that created a hostile

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environment based on her national origin (shared Jewish ancestry) and identified the following concerns regarding the District’s response to the reported harassment:

- While the District took several steps in response to most of the incidents of harassment experienced by the Student, OCR is concerned that the District’s miscoding of each incident of harassment directed to the Student; its failure to address repeat offenders effectively, including through discipline and its enforcement; and its failure to timely implement a safety plan for the Student may have contributed to a continuing hostile environment for the Student.
- The District also did not maintain adequate documentation of its investigation of other incidents of harassment at the School during the [redacted content] school years. OCR is concerned that the District’s inadequate record-keeping may have impeded the District from identifying whether a hostile environment existed for other students and from taking timely, reasonable, and effective steps to eliminate any hostile environment.

After a careful review of the evidence obtained to date, OCR determined that it is appropriate to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM) because OCR identified concerns that can be addressed through a resolution agreement. The District signed a resolution agreement to address the concerns OCR identified. Following are the relevant legal standards and a summary of the evidence OCR reviewed during the investigation.

### **DISTRICT’S POLICIES & PROCEDURES**

[District Policy 8002](#) (Equal Educational Opportunities) prohibits discrimination on the basis of race, color, gender, sexual orientation, religion, national origin, disability, marital status, genetic information, veteran status, and any or all other legally protected characteristics. The District does not, however, have any policy that provides for a grievance procedure for reporting discrimination, other than sexual harassment, which does appear in the [Student Code of Conduct](#) in the Student Handbook.

As relevant to this investigation, the Student Handbook, which includes the Student Code of Conduct, provides definitions for various offenses, including that:

- Inappropriate Behavior is defined as “behavior which produces distractions, friction or disturbances which seriously or repeatedly interfere with the effective function of the teacher and/or students within the school environment including, but not limited to, actions that could endanger the safety and welfare of others, or plan to violate the school code of conduct.”
- Abusive Language/Gestures is defined as “student uses, or threatens to use, written or spoken language, gestures, electronic images, photos or actions, which are offensive, obscene, and/or vulgar.”
- Bullying is defined as “any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of: (1) Placing a student, school volunteer or school employee in reasonable fear of substantial harm to his or her emotional or physical well-being or substantial damage to his or her property; or

(2) Creating a hostile, threatening, humiliating or abusive educational environment due to the pervasiveness or persistence of actions or due to a power differential between the bully and the target; or (3) Interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities or benefits; or (4) Perpetuating bullying by inciting, soliciting or coercing an individual or group to demean, dehumanize, embarrass or cause emotional, psychological or physical harm to another student, school volunteer or school employee.”

- Harassment is defined as “any actions or statements made with the intent to harass, annoy, or alarm another person which: A) insults, taunts, or challenges the other person or; B) is a cause of alarming or distressing conduct which serves no legitimate purpose and is done in a manner which the actor knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress.”

The disciplinary consequences for all of the above offenses are similar, ranging from level one consequences such as a reprimand, parent contact, temporary removal from class, restitution, and detention, up to and including a level four consequence such as a 4 to 10 day out-of-school suspension.

According to the [Delaware Department of Education](#) website, schools are required to input disciplinary offenses into an electronic reporting system called [eSchool](#). According to the website, Inappropriate Behavior, Abusive Language/Gestures, and Harassment do not need to be reported to the Delaware Department of Education. Bullying, however, is a Department of Education [reportable offense](#).

## **FACTUAL SUMMARY**

### **A. Incidents of Harassment of the Student and the District’s Response**

The [redacted content] (School) is a [redacted content] school in the District that serves students in grades [redacted content]. The Student is Jewish and attended [redacted content] at the School during the [redacted content] school year. In the [redacted content], the Student experienced several incidents of harassment based on her shared Jewish ancestry, described in more detail below.

#### **1. [Redacted content] Paper Airplane Incident**

On [redacted content], Students 1, 2, and 3 created a paper airplane with writing in red ink that stated “Blood of the Jews,” along with red ink splattered on the paper airplane, creating the appearance of drops of blood. Several swastikas were drawn on the paper airplane and “I hate niggas” and “Nutter 5000” were written on the paper airplane too. During [redacted content], Student 1 threw the paper airplane at the Student, who was sitting alone at a table across the room, striking her in the leg. The Student immediately reported the incident to the School Counselor and gave her the paper airplane. The School Counselor then alerted the Assistant Principal and gave him the paper airplane. On that same date, the School Counselor reached out to the Student’s parents twice.

The Assistant Principal commenced an investigation that same day. The Assistant Principal and School Counselor first reviewed video of the [redacted content] during the time the paper airplane was thrown at the Student. OCR reviewed the video of the incident, which shows Student 1 standing up, walking over to his backpack, pulling out his laptop, and retrieving the paper airplane from inside the laptop. He then returns to his seat [redacted content], looks around and throws the paper airplane towards the Student.

After reviewing the video, the Assistant Principal took the paper airplane to the Dean and described the video to him. The Dean and Assistant Principal interviewed the Student and Student 1. Student 1 stated that Students 2 and 3 were also involved in the incident. The Dean and Assistant Principal then interviewed Students 2 and 3. The Dean told OCR that Student 1 initially did not admit to being involved in creating or throwing the paper airplane until the Dean and Assistant Principal noticed red marker on his elbow and questioned him about it. At that point, according to the Assistant Principal, Student 1 admitted that he was involved, and admitted to drawing a swastika on the paper airplane. The Assistant Principal stated that Student 2 admitted to writing “Blood of the Jews” on the paper airplane, and Student 3 admitted to writing “Nutter 5000.” The information provided by the District does not explain the meaning of “Nutter 5000.” According to the Dean and Assistant Principal, the students stated they could not recall who wrote “I hate niggas” on the paper airplane. After the Dean and Assistant Principal spoke to Students 1, 2, and 3, the Dean asked the Assistant Principal to collect written statements from them, which the Assistant Principal did that same day.

That same day, the Assistant Principal imposed consequences on each student that included an educational component. Student 1 received a 1-day out-of-school suspension for Inappropriate Behavior, was required to write a reflection letter after researching the Holocaust and was assigned a seat [redacted content]. Student 2 received a 1-day detention for Inappropriate Behavior, was required to meet daily with the School Counselor for a morning check-in, was required to write a reflection letter and assigned [redacted content]. Student 3 received a 1-day detention for Inappropriate Behavior, was required to write a reflection letter, and was [redacted content]. The Assistant Principal called the parents of Students 1, 2, and 3 to communicate the discipline imposed on each student. School staff also conducted a conference with the parents of Student 3.

On [redacted content], the Student’s parents called and requested an update on the investigation and expressed concern regarding the reported consequences issued, particularly for Student 1. According to the District, the Student’s parents stated that they believed that Student 1 intended to target the Student because she is Jewish and that further investigation should take place. In addition, the Student’s parents referenced an incident from the prior year involving Student 1 in which he allegedly made threats of violence in a group chat. [Redacted paragraph].

The Dean told OCR that after reviewing the witness statements that the Assistant Principal collected the day prior and the reflection letter that Student 2 wrote, he determined that Student 1’s conduct warranted additional discipline. The Dean also told OCR that he spoke with the Assistant Principal and asked for more details about what the video of the incident showed. Based on his review of the evidence, the Dean recommended to the Assistant Principal that she change the offense code for the incident from Inappropriate Behavior to Abusive Language/Gestures, and that the discipline for Student 1 should be increased from a 1-day suspension to a 3-day suspension. Accordingly, on that same date, [redacted content], School

staff contacted Student 1's parents to explain that, based on a further review of the evidence, School staff determined that Student 1 exhibited Abusive Language/Gestures which increased the consequence from a 1-day out-of-school suspension to a 3-day out-of-school suspension, through [redacted content].

On [redacted content], the Dean spoke with the Student's parents regarding a safety plan to support the Student upon Student 1's return to School on [redacted content], following his suspension. The District provided OCR with the Dean's notes of the call, which reflect that the Student's parents expressed concern for the Student's safety and that Student 1 should be expelled. The notes indicate that the parents asked the Dean whether Student 1's conduct constituted bullying, and that "they were told no but [Student 1] would be informed of [the] bullying policy and expectations to refrain from any interactions and speech towards [the Student]." The notes also indicate that the Dean conveyed that a safety plan would be put in place for the Student, which would entail a check-in for the Student with the School Counselor every other day, and monitoring by the Behavior Interventionist during hallway transitions where the Student's classroom was in close proximity to Student 1. During his interview with OCR, the Dean acknowledged that the safety plan was not created until almost two weeks later, on [redacted content]. In the interim, starting on [redacted content], the School Counselor spoke with the Student at the beginning of each day to ask the Student how she was doing, and inquire if there were any further incidents. Also, starting on [redacted content], the School established a daily, required check-in for Student 1 with the School Counselor during which the Counselor reviewed behavior expectations with Student 1 and his interactions with the Student.

The Dean told OCR that, after reviewing additional documentation, including the letter of reflection from Student 1 and Student 2, he also changed the offense code for Student 2 to Abusive Language/Gestures on [redacted content], and increased the disciplinary sanction for Student 2 from a 1-day detention to a 2-day out-of-school suspension. No changes were made to the offense code or disciplinary sanctions for Student 3.

During an OCR interview with the Dean, he stated that he initially viewed the paper airplane incident as falling within the Abusive Language/Gestures category of the Student Code of Conduct, which he interpreted to include hate speech, although he acknowledged to OCR that the incident fit the criteria for creating a hostile environment based on shared Jewish ancestry. The Dean also stated that he later revisited the coding of the offense after the State Ombudsman – the Complainant - contacted the School in [redacted content] to discuss the incident on behalf of the Student. Following that conversation, in [redacted content], the School revised the offense code for Students 1, 2, and 3 for the [redacted content] paper airplane incident from Abusive Language/Inappropriate Behavior to Bullying.

Although Student 1 was instructed to check-in immediately with the School Counselor upon his return to School, he did not do so. The Counselor had to go to Student 1's first block class to conduct the check-in.

The day of Student 1's return, the Dean emailed the Student's teachers to inform them of "an incident of abusive language and gestures (Anti-Semitic)" that occurred the prior week. The email identified Students 1, 2, and 3 as the students involved in the [redacted content] paper airplane incident and described the incident. The Dean explained the consequences issued to Students 1, 2, and 3, and stated that the Student should be permitted access to the School

Counselor when requested. The email reminded the teachers that they must report any abusive language or gestures mentioned about any identity group by Students 1, 2, and 3 or from any student. The Dean stated that the purpose of the email was so each teacher could be informed and know how to respond. The email reminded teachers that any derogatory statements, symbols or hate messages found on tables, desks, paper, or reports of bathrooms having graffiti, needed to be brought to the attention of administration and maintenance immediately.

## **2. [Redacted content] “Heil Hitler” Incident**

Approximately 10 minutes after Student 1 threw the paper airplane at the Student on [redacted content], Students 1, 2, and another student (Student 6) performed a “Heil Hitler” salute [redacted content] while other students were present. Although OCR requested that the District provide documentation of all reports and complaints concerning the harassment of students on the basis of national origin, including shared ancestry, at the School during the [redacted content] school years, the “Heil Hitler” incident was not initially reported to OCR by the District. OCR obtained evidence of this incident subsequently through its request for all incidents for the [redacted content] school years in which any student was charged with Inappropriate Behavior, Abusive Language/Gestures, Harassment or Bullying. The spreadsheet that the District provided in response to this request reflects that the Assistant Principal gave Student 6 a 2-day out-of-school suspension on [redacted content] for “Abusive Language/Gestures” for the “Heil Hitler” incident.

The Dean explained that the “Heil Hitler” incident was discovered in [redacted content] through another review of the video recording of the [redacted content] paper airplane incident, at the Complainant’s request. After reviewing a longer portion of the video, the Dean and other District administrators observed Students 1, 2, and 6 performing a “Heil Hitler” salute approximately 10 minutes after the paper airplane was thrown at the Student. The Dean acknowledged that the video suggested that the salute was directed toward the Student but stated that no investigation was completed because this incident was not observed until weeks after it happened.

Students 1 and 2 did not receive any additional disciplinary consequence for the “Heil Hitler” incident. The Dean explained that they had both already received discipline for the [redacted content] paper airplane incident, and the additional infraction still fell within the 2-3 day suspension that they had already received for that incident. Although the Assistant Principal was responsible for assigning discipline for the “Heil Hitler” incident, she could not recall any details of her involvement in this incident or why no further disciplinary action was taken against Students 1 and 2.

## **3. [Redacted content] Class Incident**

On [redacted content], the Student’s mother reported to School staff that on [redacted content] students were talking about Kanye West in the Student’s [redacted content] class, and when the Student asked them to stop, a classmate told the Student to “shut the fuck up.” The Student’s mother reported that students commented at the end of class that they agree with Kayne and Hitler. The District informed OCR about this report from the Student’s mother in a narrative statement in response to OCR’s investigation, but did not provide any documentation of the Student’s mother’s report to the School.

The District obtained a written statement from the Student about this incident on [redacted content]. In the Student's written statement, she wrote that Student 5 was talking about Kanye West in [redacted content] class and when she asked him not to talk about Kanye West, Student 5 told her to "shut the f\*\*\* up." She also wrote that, when the class started packing up, Student 5 approached Student 4's table and they both said to the Student "I support Kanye West, Hitler was right." She also wrote that she did not know if anyone overheard the interaction.

The Assistant Principal and the Dean interviewed the [redacted content] teacher to ask if she heard any discussion of Kanye West or Hitler by any students that day, which she denied.

The Assistant Principal and Dean also interviewed Students 4 and 5 and provided OCR with their witness statements. Student 5 wrote that he "didn't say that about Kanye or Hitler," and that he did not remember "anyone saying that." Student 4 wrote that he "didn't hear anyone in [redacted content] say anything about Kanye West or Hitler and I didn't say anything about them either." The District told OCR that it could not substantiate that the incident occurred.

#### **4. [Redacted content] Swastika Incident & Prior Swastika Incidents**

In the District's narrative statement to OCR, it explained that, on [redacted content], while the Student was in [redacted content] class, the Dean received an email from the Student's mother stating that the Student found a swastika drawn on the leg of her desk.

During interviews with District staff, a teacher told OCR that two other incidents of swastikas drawn onto a desk occurred in her classroom during the [redacted content] school year. The first occurred in [redacted content]. At that time, the teacher notified maintenance but spackled the swastika herself because maintenance did not immediately respond. According to the teacher, although the Student was assigned to her class at the time, the Student was unaware of this first swastika incident. The second incident occurred in the [redacted content]. The teacher told OCR that a swastika was faintly drawn on the desk that the Student used, which was the same desk assigned to Student 1 for a different class. The teacher also stated that she reported it to administration, but nothing was done in response. The Supervisor of Secondary Schools confirmed that he was aware of the second swastika incident in this teacher's classroom. However, the District did not report this incident to OCR or provide any documentation related to this incident.

The Assistant Principal told OCR that, following the [redacted content] swastika incident in [redacted content] class, he went to the class immediately and spoke with the Student, who did not want to move seats, and did not want to speak with the School Counselor. When the class concluded, the custodian washed the swastika off of the leg of the desk, and the Supervisor of Secondary Schools spoke with the Student. The Supervisor of Secondary Schools told OCR that he apologized to the Student about this incident and the [redacted content] paper airplane incident, and said they were investigating the incidents.

The District's narrative statement indicates that, on [redacted content], the Dean spoke to the Student's parents and the School Counselor also met with the Student that same day to provide support and ask if any additional incidents occurred.

In response to the [redacted content] report, on [redacted content] the Assistant Principal interviewed 10 students (Students 6 to 15) based on video showing when and who entered the

classroom that day. The District provided OCR with the students' witness statements, which reflect that none of the students identified the individual who drew the swastika. Although the individual(s) could not be identified, the District told OCR that teachers and custodians were asked to check all desks or furniture for antisemitic symbols.

On [redacted content], the School reviewed school-wide expectations for student behavior with all [redacted content] students during an assembly. The District provided OCR with a copy of the PowerPoint used during the assembly, which shows that it described offensive touching, the Abusive Language/Gestures disciplinary offense, and disciplinary consequences for such infractions.

Also on [redacted content], the Dean sent an email to the Student's parents, in which he assured them that any student who violates the Code of Conduct regarding abusive language, gestures, or hate speech, will receive consequences as well as resources for additional support and appropriate education. He explained that he met and spoke with Student 1 and his parents to discuss expectations for Student 1's behavior in order to ensure a safe learning environment and the Student's teachers were made aware of the situation to provide her with extra support and protocols to respond appropriately. The Dean also stated that they investigated the swastika found on the leg of the Student's chair in her [redacted content] class and were working closely with the local police regarding the swastika incident and the paper airplane incident. District staff told OCR that the police informed them that they did not consider the incident to be a hate crime. District staff interviewed by OCR were not aware of how the police investigation concluded.

The Dean also explained in his email to the Student's parents that the School was making efforts to engage in professional development in the area of diversity, equity and inclusion by providing training and that he planned on meeting with a local rabbi to discuss a partnership with the School to provide more educational resources. The Dean also stated that there would be a public safety presence at all [redacted content] events, the School Counselor would meet with the Student regularly, and she and the Behavior Interventionist would monitor school hallways during transitions. OCR's investigation confirmed that the [redacted] police attended the [redacted content] dance, the School Counselor met frequently with the Student and Student 1 during the [redacted content], and that the Behavior Interventionist monitored school hallways during transitions. The Dean also told OCR that he was in regular contact with a local rabbi during [redacted content] to discuss how the School could continue to build support for the Jewish community. OCR's investigation also confirmed that the District contracted with the Anti-Defamation League (ADL) to map out programming for students through the [World of Difference Institute](#) for the 2023-2024 school year. In his [redacted content] interview with OCR, the Dean said that approximately 20 students are currently in training with the Institute.

On [redacted content], the Student's father emailed the Dean and Supervisor of Secondary Schools to report that, on [redacted content], the Student was seated with Student 5 in [redacted content] class. The father said that Student 5 was one of the students involved in the [redacted content] class incident, described above. He asked that the School ensure that the Student did not sit with Students 4 or 5. During her interview with OCR, the [redacted content] teacher could not recall this incident.

In the District's narrative statement, it explained that, on [redacted content], the School Counselor met with the Student to discuss how she was doing and to work with the Student to create a safety plan. The School Counselor's notes reflect that the Student said that she believed



that the students involved in the paper airplane incident should not be allowed to go to the [redacted content] dance. In addition, she said that the School needed an assembly that addressed “hate crimes,” not abusive language.

On [redacted content], the Dean emailed the Student’s parents to inform them that he was working with the [redacted content] teacher to ensure that the Student would not be seated near Students 4 or 5. He also informed the Student’s parents that he was unable to substantiate that any students made any alleged reference to Kanye West and Hitler during [redacted content] class on [redacted content], as there were no student witnesses, the [redacted content] teacher did not overhear anything, and Students 4 and 5 denied making the alleged statement supporting Kanye West and Hitler. The Dean also attached to his email the reflection letters written by Students 1 and 2, and a copy of the safety plan that the District developed for the Student. The safety plan provided for a check-in with the School Counselor every other day; monitoring by the Behavior Interventionist during hallway transitions where the Student’s classroom was in close proximity to Student 1; routine inspections of tables and chairs for hate language or symbols by teachers and custodians; assigned seating of Student 1 and 2 in the [redacted content] at a location away from the Student, and close to the [redacted content]; where the Student shares class with Student 2, teachers will seat the two across the room from one another and ensure they are not assigned to the same group; a seating arrangement in [redacted content] class; and public safety and administration presence at the [redacted content] and dance.

#### **5. [Redacted content] Violation of the Student’s Safety Plan**

On [redacted content], the Student reported to School staff that Student 1 entered her [redacted content] class although the safety plan prohibited him from doing so. The Student informed the substitute teacher, who was leading the class at the time, and told the teacher that she was scared. Student 1’s discipline report reflects that he was given a 1-day in-school suspension for Trespassing for this incident. The Dean told OCR that Student 1 also was not permitted to attend the [redacted] dance as an additional consequence for this incident.

#### **6. District’s Response to the [redacted content] Appeal of Student 1’s Discipline**

On [redacted content], the parents of Student 1 appealed his suspension due to the [redacted content], incident and other disciplinary incidents. The appeal was denied, and the parents elevated the appeal to the Assistant Superintendent, arguing, among other concerns, that Student 1 was not aware that the Student was Jewish and that he and the other students were “[redacted content].”

On [redacted content], the Assistant Superintendent notified the parents of Student 1 that the suspension for the [redacted content] paper airplane incident would be modified from a 3-day out-of-school suspension to a 2-day out-of-school suspension. The Assistant Superintendent told OCR that the parents of Student 1 appealed the suspension on the basis that they believed that the suspension was based, in part, on the incident described above from the prior year in which Student 1 allegedly made threats of violence in a group chat.

The Assistant Superintendent told OCR that the 3-day suspension imposed on Student 1 was solely based on Student 1’s involvement in the [redacted content] paper airplane and the “Heil Hitler” incident. However, he reduced the suspension for Student 1 because Student 1 was

[redacted content]. The Assistant Superintendent also gave the same rationale for removing from Student 1’s disciplinary record a 4-day suspension given to Student 1 for making monkey sounds towards a Black student on [redacted content].

## **7. Disciplinary Records for Students 1, 2, 3, 4 and 5**

The District provided OCR with the disciplinary report for Students 1, 2, 3, 4, and 5. The disciplinary report for Student 1 shows that he had seven prior disciplinary infractions during the [redacted content] school year, including one incident in which he was disciplined for Inappropriate Behavior for making “monkey sounds” towards a Black student, as described above. On [redacted content], Student 1 was also disciplined for Inappropriate Behavior for inserting a picture of Osama Bin Laden into an assignment instead of a picture of himself.

Student 2 also received a subsequent disciplinary infraction on [redacted content], for Bullying, because he called a student with a disability “dumb, stupid, dumbass, retarded,” and another student “bitch” and “special education.” The description for the incident indicates that Student 3 was also involved in the [redacted content], bullying incident, and that Student 3 also targeted the same student with a disability on another occasion by breaking his watch. He was given a verbal warning for breaking the student’s watch. Students 4 and 5 had no prior disciplinary history for Inappropriate Behavior, Abusive Language/Gestures, or Bullying.

### **B. Other Incidents of Harassment at the School in 2021-2022 and 2022-2023**

During the course of OCR’s investigation, OCR requested documentation of all reports and complaints concerning the harassment of students on the basis of national origin, including shared ancestry, at the School during the 2021-2022 and 2022-2023 school years. In its initial data response, the District reported two additional incidents to those reported about the Student that involved a Jewish student allegedly [redacted content]. The District stated that the two additional incidents were not substantiated.

Subsequently, OCR requested documentation of all incidents for the 2021-2022 and 2022-2023 school years in which any student was charged with Inappropriate Behavior, Abusive Language/Gestures, Harassment, or Bullying at the School. In response, the District provided OCR with an excel spreadsheet listing 388 incidents that were coded as one of those categories. Of the 388 incidents reported for the 2021-2022 and 2022-2023 school years, only one was coded as Harassment, and only three were coded as Bullying. The remaining 384 incidents were coded as Inappropriate Behavior or Abusive Language/Gestures. For the incidents listed, the spreadsheet includes the name and race of the students involved, the date of the incident, the School staff involved, a description of the incident, the offense category, discipline assigned and by whom, and, in some instances, other interventions taken by the School.

OCR requested the complete investigative file for 13 incidents during the 2021-2022 and 2022-2023 school years coded as Inappropriate Behavior or Abusive Language/Gestures. The incidents for which OCR requested the complete investigative files include: a student calling another student “a black n-word,” which was coded as Inappropriate Behavior, with no disciplinary action taken; a student calling another student a “Fagot [sic]” because the other student called him gay, which was coded as Inappropriate Behavior, with a referral to the counselor as the disciplinary action taken; a student admitting to saying the ‘N word’ to another

student, which was coded as Inappropriate Behavior, with parent contact and suspension as the disciplinary action taken; a student shouting “Yo, F\*\*\* that n\*\*\*\*\* up!” while walking past an altercation, which was coded as Inappropriate Behavior, with parent contact and detention as the disciplinary action taken; students engaging in “racist talk/comments” [redacted content], which was coded as Abusive Language/Gestures, with parent contact and student counseling as the disciplinary action taken; a student saying “Ching Chong” while a class was [redacted content], which was coded as Inappropriate Behavior, with student counseling and detention as the disciplinary action taken.

The District did not provide an investigative file for any of the incidents and instead told OCR that the only information available from the School is the information captured in the spreadsheet. For some of the incidents, the District noted interventions other than discipline, but the interventions were with few exceptions limited to student counseling and/or parent contact. The spreadsheet does not contain information about any interventions or supports provided to the victim of the alleged harassment or others potentially impacted by the alleged harassment.

### **LEGAL STANDARD**

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. The existence of a hostile environment that is created, encouraged, accepted, tolerated or left uncorrected by a recipient constitutes discrimination on the basis of national origin in violation of Title VI. Harassment that creates a hostile environment for individuals with a shared ancestry or ethnic characteristics, such as students of Jewish descent, is a form of national origin discrimination under Title VI.

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.

OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome national origin-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity. Harassing acts need not always be targeted at the complainant in order to create a hostile environment. The acts may be directed at anyone, and the harassment need not be based on the complainant’s or victim’s national origin so long as it is motivated by national origin (e.g., it might be based on the national origin of a friend or associate of the victim). The harassment must in most cases consist of more than casual or isolated incidents to establish a Title VI violation. Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the national origin-based harassment, as well as the identity, number, age, and relationships of the persons involved.

A school may be found to have violated Title VI if it has failed to correct a hostile environment based on harassment of which it has actual or constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient.

Once a recipient has actual or constructive notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely and effective. The appropriate response to a hostile environment based on national origin must be tailored to redress fully the specific problems experienced at the school as a result of the harassment.

### **ANALYSIS**

The evidence shows that the Student experienced several incidents of harassment from [redacted content] through the end of the school year on the basis of her shared Jewish ancestry. The evidence also shows that the District had notice of harassment of the Student in [redacted content] when the Student reported that classmates drew an antisemitic image and epithet on a paper airplane that was thrown at her. In response to the incident, the District disciplined the offending students, arranged for the Student to meet with the School Counselor, and held a class assembly for the [redacted content] students.

Despite the steps taken by the District to address the harassment of the Student, the evidence suggests that a hostile environment existed – and continued – for the Student beginning in [redacted content]. Specifically, peer students targeted the Student for specific harassment because she is Jewish, throwing a paper airplane at her with “Blood of the Jews” and multiple swastikas scrawled on it as well as bloody imagery and another white supremacist hate phrase during [redacted content]. On the same day of the [redacted content] paper airplane incident, Students 1, 2 and 6 raised their arm in a “Heil Hitler” salute [redacted content], and only one week after the [redacted content] paper airplane incident, the Student discovered a swastika drawn onto her desk. Of concern, the District did not provide OCR with information regarding the “Heil Hitler” incident even though OCR requested information regarding all incidents of harassment based on shared Jewish ancestry. Further, although Student 6 was disciplined for the “Heil Hitler” incident, Students 1 and 2, who had already been disciplined for engaging in harassment based on the Student’s Jewish ancestry, were neither assigned any discipline nor otherwise addressed for this incident even though the two students had not been forthcoming during the District’s investigation of the paper airplane incident about their involvement in the “Heil Hitler” incident some ten minutes later. Further, there is no evidence that the District took any steps to address this incident with the Student or other students to mitigate its effects.

The hostile environment for the Student continued with the appearance of a swastika in two of the Student’s classes in the [redacted content], of which the District only reported one swastika incident to OCR. Although the School arranged for meetings between the Student and the School Counselor, the separation of Student 1 from the Student, and a daily check-in for Student 1 upon his return to School, the School did not in fact always enforce these arrangements and no formal safety plan was implemented for the Student until almost two weeks after Student 1’s return to school, on [redacted content]. Specifically, although the District implemented a safety plan that

promised the separation of the Student from Student 1, approximately two weeks later, Student 1 came to her [redacted content] class while there was a substitute teacher, causing the Student to be fearful. Similarly, although Student 1 was required to check-in with the School Counselor upon his return from suspension, he did not do so.

A review of the evidence also shows that the [redacted content] paper airplane incident was not Student 1's first incident of harassment directed at another student. That same school year, Student 1 was disciplined for Inappropriate Behavior for making "monkey sounds" towards a Black student. And yet, his behavior continued with the paper airplane incident on [redacted content], the "Heil Hitler" incident on [redacted content], and then again when he inserted a picture of Osama Bin Laden into an assignment instead of a picture of himself in [redacted content]. Similarly, Student 2 also engaged in harassing behavior moments following the paper airplane incident on [redacted content], during the "Heil Hitler" incident, and when he used disability-related epithets against a classmate in [redacted content]. Despite the District's efforts to address the behavior of Students 1 and 2 through disciplinary action, the harassment continued without escalated or further responsive action from the District.

OCR is also concerned that the District's inconsistent discipline and miscoding of incidents of harassment impeded the District from assessing whether a hostile environment existed at the School for the Student. In particular, while the District eventually disciplined Student 1 with a 3-day out-of-school suspension for his involvement in the [redacted content] paper airplane incident, he was not disciplined for the [redacted content] "Heil Hitler" incident, and the Assistant Superintendent minimized the significance of Student 1's harassing conduct by downgrading the suspension to a 2-day out-of-school suspension only because Student 1 [redacted content]. Further, although the District eventually revised the coding of the incidents involving the Student as bullying, when initially requested, the Student's parents were explicitly – and inaccurately – told that the paper airplane incident on [redacted content] did not constitute bullying. OCR is concerned that the District's failure to address the nature of the harassment – that the students were targeting the Student because she is Jewish – may have contributed to the ineffectiveness of the District's efforts in preventing the harassment from recurring.

Similarly, the spreadsheet of discipline data for the School for the 2021-2022 and 2022-2023 school years that the District provided to OCR revealed multiple incidents of suspected harassment involving classmates repeatedly using racial and gender-based epithets throughout the entire school year. Due to the District's overall poor, and inconsistent, record-keeping of each incident, however, OCR was unable to assess whether any of these incidents created a hostile environment, and if so, whether the District responded and the adequacy of the District's response. The information contained in the spreadsheet suggests that the District's response to the incidents listed generally involved disciplining the offending student, while other interventions were infrequent and limited to parent contact or student counseling. Further, there is no indication that the District took steps to address the impact on the victim(s) of the alleged harassment or others. The spreadsheet also suggests that the District's miscoding of incidents is a systemic problem. OCR identified multiple incidents of alleged harassment that were consistently miscoded as Inappropriate Behavior or Abusive Language/Gestures, instead of harassment. By treating each report of harassment as an isolated disciplinary incident of Inappropriate Behavior or Abusive Language/Gestures, the District may have failed to recognize the accumulation of evidence of a hostile environment.

## **CONCLUSION**

Pursuant to Section 302 of the CPM, the District resolved the complaint through a voluntary resolution agreement. The District signed the enclosed Agreement which, when fully implemented, will address OCR's concern in this complaint. Specifically, the Agreement requires that the District:

- offer to reimburse the Student's parents for past counseling, academic, or therapeutic services they obtained for the Student as a result of the harassment the Student experienced based on her Jewish ancestry;
- widely publicize an anti-harassment statement;
- review its policies and procedures to ensure that they adequately address Title VI's prohibition on discrimination based on race, color, and national origin, including discrimination based on a student's actual or perceived shared ancestry or ethnic characteristics;
- develop or revise its procedure for documenting the School's investigation of reports of harassment;
- annually train all administrators, faculty, and staff at the School on Title VI's prohibition of discrimination based on race, color, and national origin, including on the basis of shared ancestry and ethnic characteristics;
- annually train School staff, including school-level administrators who are directly involved in processing, investigating, and/or resolving complaints and other reports of discrimination based on race, color, and national origin, including harassment based on shared ancestry and ethnic characteristics;
- provide an age-appropriate informational program for students at the School to address discrimination based on race, color, and national origin, including harassment based on shared ancestry and ethnic characteristics;
- conduct an audit of all complaints received during the 2023-2024 school year addressing discrimination on the basis of race, color, and national origin, including harassment on the basis of shared ancestry and ethnic characteristics, to ensure consistency of the application of and compliance with the District's policies and procedures;
- conduct an audit of all incidents at the School coded as "Inappropriate Behavior" and "Abusive Language/Gestures" during the 2021-2022 and 2022-2023 school years to determine if any of the incidents constituted discrimination on the basis of race, color, and national origin, including harassment on the basis of shared ancestry and ethnic characteristics, and if so, take appropriate steps to remedy the harassment on any affected students; and,
- conduct a climate survey with students and provide OCR a summary of the survey results and the District's proposed corrective actions in response to the survey results for OCR approval.

OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be

relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District 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, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint 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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Gina DePietro, Team Attorney, at 215-656-8595 or at [gina.depietro@ed.gov](mailto:gina.depietro@ed.gov).

Sincerely,

/s/

Beth Gellman-Beer  
Regional Director  
Philadelphia Office

Cc: Michael Stafford, Esq (via email only)