



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD., SUITE 310  
DENVER, CO 80204-3582

REGION VIII

ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

August 23, 2022

Laura Toenjes, Superintendent  
Kyrene School District  
8700 South Kyrene Road  
Tempe, Arizona 85284

Re: Kyrene School District  
OCR Reference No. 08-19-1367

Dear Superintendent Toenjes:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Kyrene School District (District). OCR investigated whether the District failed to respond appropriately to complaints that the student was subjected to discrimination at a District [redacted content] school (School) based on her Jewish ancestry.

OCR is responsible for enforcing 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, under any program or activity that receives 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.

OCR reviewed records and information provided by the District, the Complainant, and the Student. In addition, OCR interviewed the Complainant, the Student, and School staff, including the principal and seven teachers, as well as a former teacher at the School. Based on the evidence obtained and the applicable legal standards, OCR determined that the student was subjected to harassment that created a hostile environment based on her Jewish ancestry and the District failed to take reasonable responsive action to eliminate the hostile environment and prevent its recurrence, as required by Title VI. To resolve OCR's findings, on August 22, 2022, the District entered into the enclosed resolution agreement (Agreement) that OCR will monitor to ensure the District's compliance with the Agreement's terms and with Title VI and its implementing regulation.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

## **Legal Standards**

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. Harassment that creates a hostile environment for individuals with a shared ancestry, such as students of Jewish descent, is a form of national origin discrimination under Title VI.

Harassment creates a hostile environment when the conduct is sufficiently severe, persistent or pervasive that it interferes with an individual's ability to participate in or benefit from a recipient's program. The harassment in most cases consists of more than casual or isolated incidents based on national origin. If OCR determines that the harassment was sufficiently severe that it would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age and national origin as the victim, under the same circumstances, OCR will find that a hostile environment existed. A school may be found to have violated Title VI if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a hostile environment based on national origin harassment of which it has actual or constructive notice.

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 respond adequately to redress the hostile environment based on national origin. Whether conduct constitutes 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, and relationships of the persons involved.

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 district as a result of the harassment.

## Findings of Fact

The School is one of six [redacted content] schools in the District [redacted content] with approximately 1,065 [redacted content] school students in attendance. [redacted content]. The Student was in the [redacted content] grade in the 2018-19 school year.

The Complainant reported to OCR that the School [redacted content] notified her in early [redacted content] 2019, that the Student was engaging in [redacted content] due to the “stress of school.” According to the Student, on [redacted content], 2019, during [redacted content], the Student went to get a [redacted content] and another student (Student A) said “[redacted content].” The Student responded by cursing at Student A. The Student was reprimanded by the [redacted content] teacher, who overheard her. That evening, the Complainant left a voicemail message and sent an e-mail to request a meeting with the School’s assistant principal (Assistant Principal) the following morning.

On [redacted content] 2019, the Student and the Complainant met with the School’s principal (Principal). The Student informed the Principal about the incident that occurred during [redacted content] and also reported that since [redacted content] 2018, nine students (Students A-I) had been harassing the Student at school and via social media, by calling her names such as “dirty Jew,” “stinky Jew,” and “filthy Jew.” She also said the students were making jokes about the Holocaust, speaking with a German accent, and marching and saluting like Nazi soldiers. She reported that students said, “I hear you are good at head because Jews are so good at gasping for air,” and would ask her “How do you get a Jewish girl’s number?” then lift her sleeve. The Complainant provided the Principal a list of the alleged conduct by e-mail, including videos of the students engaging in the conduct and social media messages she obtained from the Student. The videos portray a student, at home, marching and saluting like a Nazi soldier while attempting to yell in German and students, in a School classroom, saluting and stating “[t]his is the most glorious time in our country” in a German accent. In addition, one message included the statement, “[redacted content],” and another, “[redacted content].”

The Principal told OCR that he made counseling from the [redacted content] available to the Student in response to the reported harassment. However, the Student reported that she did not recall meeting with the [redacted content] about the harassment, and there were no District records indicating the [redacted content] met with the Student after the [redacted content], 2019, harassment report. The Complainant told OCR that when she spoke to the [redacted content] in early [redacted content] 2019, she did not realize that the “stress at school” and the Student’s [redacted content] behaviors were related to the anti-Semitic harassment the Student experienced, but she later understood the relationship. The Complainant also confirmed that the [redacted content] did not meet with the Student following the reported harassment.

On [redacted content], 2019, the Principal commenced interviews<sup>1</sup> with Students A-I. The Principal did not conduct interviews with the [redacted content] teachers, except for one former

---

<sup>1</sup> Concurrently, the Principal contacted the Phoenix Police Department to report the harassment. On [redacted content], 2019, PPD reviewed the social media videos and met with the Principal and Complainant. The District

employee (Teacher J). In his interview with OCR, the Principal mentioned only one teacher by name, Teacher J, with whom he recalled speaking about the harassment.<sup>2</sup> He further stated that he had “conversations with...relevant staff” and “checked in individually” with teachers on an “informal” basis when he saw them; however, the Principal had little recollection of the conversations and indicated that he never documented the substance of the conversations because staff stated to him that they “didn’t see anything.” In her interview with OCR, Teacher A, who was one of the Student’s teachers, stated that she was not interviewed by the Principal. OCR also interviewed seven other [redacted content] school teachers and when asked what they knew about what happened to the Student, they only mentioned the [redacted content], 2019, meeting with the Principal after the investigation was completed (see discussion below).

While the Principal’s student interviews were ongoing, the Complainant e-mailed the Principal additional social media messages she obtained from the Student, including a message by Student A that read “[redacted content].” The Principal’s interview notes indicate that he found that Students A-I directed harassing comments and behavior toward the Student at school and on social media by directing jokes about the Holocaust toward the Student, speaking with what appeared to be a German accent, marching and saluting like Nazi soldiers, pretending to be Hitler, and by targeting her with anti-Semitic slurs. The Principal disciplined Students A-I for engaging in Ethnic/Racial/Hate Speech pursuant to District Policy JICK, Regulation JICK-R, and Regulation JK-R (Policies).<sup>3</sup> According to the students’ discipline records, one student received in-school intervention (ISI) and the others received a combination of ISI and off-campus suspension (OCS).

On [redacted content], 2019, the Principal sent an e-mail to School staff regarding his investigation of the Student’s allegations; he stated that it was “clear that these allegations are true” and described some of the behaviors as being “directed at one student, but many of the behaviors were directed more broadly.” He further stated that the behaviors were being addressed pursuant to the Policies and the District’s Family Handbook. He invited staff to share concerns, ideas, and feedback to address “ways that we can continue to grow in this area.” On [redacted content], 2019, eight school days after the harassment was reported, and at the [redacted content] teachers request, the Principal met with them. Two of the Student’s teachers (Teachers A and B) confirmed during OCR interviews that the Principal met with staff and discussed the Student’s absence earlier in the month. Teacher A stated that the purpose of the meeting was to explain why the Student was not in school. Similarly, Teacher B explained that the Principal shared that the Student was “not comfortable coming to school” and that the behaviors occurred on-campus and on social media. She also stated that when she requested the meeting on behalf of the [redacted content] teachers, she inquired about the incidents, but the Principal declined to provide any specific details due to privacy concerns.

---

reported that the PPD created an incident report after the meeting, though neither the District nor Complainant provided a copy of the incident report to OCR.

<sup>2</sup> At the time of OCR’s interview, Teacher J was no longer employed by the District and did not respond to OCR’s requests for an interview.

<sup>3</sup> The infraction is defined as follows: “Any communication that disparages a person or group on a basis of some characteristic such as race, gender, ethnicity, religion, or sexual orientation.”

In addition, regardless of his assertion that “many of the behaviors were directed more broadly”, there is no evidence that, as part of his investigation, the Principal interviewed other students to determine whether they had experienced harassment.

The Student’s attendance records indicate that she attended [redacted content] classes on [redacted content], 2019, but was then absent from [redacted content], 2019. On [redacted content], 2019, the Complainant sent an e-mail to the Principal explaining that she was keeping the Student home from School because she was “frightened and concerned” about retaliation for having complained about the conduct of Students A-I. The Complainant requested that the School create a “safety plan” for the Student for [redacted content] of the 2018-19 school year. The Student returned to school on [redacted content], 2019, the same day some of the disciplined students returned from ISI, which resulted in some of those students attending classes with her. The District indicated to OCR that on [redacted content], 2019, it changed the Student’s schedule so that she would not be in class with those students. The Student attended school [redacted content] before leaving for [redacted content] break from [redacted content], 2019. The Student returned to school on [redacted content], 2019.

On [redacted content], 2019, in response to a request by Complainant, the Complainant met with the Principal, the District’s Director of School Effectiveness, and the District’s Superintendent. The Complainant repeated her concern that the School had not yet responded to her request of [redacted content], 2019, regarding the creation of a safety plan for the Student for [redacted content] of the 2018-2019 school year. According to the Complainant, during the meeting the District administrators repeatedly asked her what actions she wanted the District to take to address her safety concerns, but they failed to present any new safety options other than to offer to implement no-contact orders. In contrast, the District asserted that the administrators, in addition to offering no-contact orders, offered to provide counseling services and to maintain the class schedule changes it earlier provided to the Student. The Complainant informed OCR that, given the District’s failure to create a safety plan for the Student, she did not believe that the Student would be safe if she returned to school. She said she felt there was no alternative but to have the Student [redacted content] at home.

The Student began home-schooling on [redacted content], 2019. The Complainant and Student told OCR that the Student was not provided with enough homework or instruction, and consequently fell behind. On [redacted content], 2019, the Complainant e-mailed the Principal to voice concern that the Student was “overwhelmed with schoolwork” and was not “understanding” the course material. On [redacted content], 2019, the Student’s [redacted content] teacher e-mailed the Complainant to inform her that the Student was failing [redacted content]. That same day another teacher e-mailed the Student and Complainant expressing concern about the Student’s lack of timely submission of assignments and her difficulty “handling the independent nature of [her] assignments and learning.” On [redacted content], 2019, the Complainant forwarded this e-mail to the Principal, who responded by changing the Student’s grades to pass/fail.

The Student completed [redacted content] in [redacted content] 2019 and began attending [redacted content] in another school district for the 2019-202 school year. The Complainant

informed OCR that, as a result of falling behind academically during the [redacted content] of the 2018-19 school year, in her first year at [redacted content] the new district, the Student was unable to remain in honors [redacted content] and dropped the course and was enrolled in a remedial [redacted content] class. For the remainder of her time in [redacted content], the Student was unable to overcome the academic deficits she experienced. The Complainant also informed OCR that the Student continued to suffer adverse [redacted content] effects, in part, from the [redacted content] stemming from the harassment. She reported that the Student continued to engage in [redacted content] and has [redacted content], necessitating [redacted content]. The Student withdrew from [redacted content] in [redacted content] 2022.

The District reported to OCR that, as of [redacted content] 2019, School staff had received training<sup>4</sup> on issues of equity and culturally responsive teaching practices. The District reported to OCR that in [redacted content] 2019 the School implemented the Anti-Defamation League’s “No Place for Hate” program, which was designed to promote “greater acceptance...through better understanding of people’s beliefs, traditions, and behaviors.” OCR learned that in [redacted content] 2019, two [redacted content] grade students posted four anti-Semitic images on social media and tagged another Jewish student in the post. The Principal told OCR that the School disciplined the two responsible students and offered supports to the student victim. The District reported that the incidents in [redacted content] 2019 were the only additional incidents of anti-Semitic behavior.

## **Analysis**

Under Title VI, once a recipient has notice of a national origin-based hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response must be tailored to redress fully the specific problems experienced as a result of the harassment and must be reasonably calculated to prevent recurrence and to ensure that students are not restricted in their participation or benefits as a result of the hostile environment. OCR found that the District failed to implement measures to address the hostile environment that the Student experienced as it failed to develop and implement a safety plan for the Student. As a result of the District’s failure to do so, the Student and the Complainant believed that there was no alternative to ensure the Student’s safety other than home-schooling.

Specifically, the Student was subjected to a hostile environment, as there were numerous incidents occurring over the course of approximately five months related to the Student’s Jewish ancestry. Incidents included calling the Student names, such as “dirty Jew,” “stinky Jew,” and “filthy Jew”; making jokes about the Holocaust, speaking or pretending to speak in German, and marching/saluting like Nazi soldiers, to and in the presence of the Student; students making other disparaging statements about the Student’s ancestry including references to concentration camps; and, sending to the Student and others a video on social media wherein a student is carrying a

---

<sup>4</sup> Although the Principal identified a [redacted content] 2019 communication to the broader school community, that email made no mention of recent anti-Semitism experienced at the school.

rifle while pretending to speak German and intimidating a Nazi soldier. At least nine of the Student's peers engaged in the harassment and the incidents occurred throughout the School, as well as online.

OCR further found that, despite multiple occurrences of harassing conduct, the Principal failed to provide timely, specific, and clear communication to School staff regarding the harassment of the Student. Although the Principal addressed staff in general terms by e-mail and much later in a meeting, staff with a need to know were ill-informed to monitor the situation or identify ongoing harassment. Additionally, with the investigation concluded and while the Student was still attending school, the Principal waited to address the Student's schedule, which resulted in the Student and Students A-I attending class together at least one day until her schedule, not theirs, was changed.

OCR also determined that the District's response was not reasonably calculated to fully redress the problems experienced by the Student at the School as a result of the harassment. The District abdicated its obligation to provide the Student with a safe school environment, which left the Complainant with no choice but to select home-schooling for the Student to ensure her safety for the [redacted content] of the 2018-2019 school year. As a result, the Student suffered both academically and socially. Further, as a result of the academic and social disruption the Student experienced during the 2018-2019 school year, she continued to fall behind academically. The Student ultimately [redacted content].

Further, the Principal failed to address what was clearly a school-wide problem with anti-Semitic harassment. After determining that nine students had engaged in anti-Semitic harassment over a period of several months, the remedial measures he undertook were narrow and focused primarily on the punishment of the individual perpetrators. The information gathered by the Principal confirmed that incidents of anti-Semitic harassment occurred on-campus and in classrooms, yet the Principal failed to conduct interviews with the very teachers who had oversight of the classrooms where some of the harassment occurred. By failing to conduct interviews with staff or attempting to gather additional information about the extent of the anti-Semitic conduct throughout the school, the District disregarded its obligation to assess whether the verified widespread conduct negatively impacted other students.

The only school-wide measure to specifically address anti-Semitic harassment was not implemented until approximately seven months after the Principal first determined that the nine students had engaged in harassment and this training was provided only to school staff, not the student body. This delay allowed a potential hostile environment to persist in the School.

Based on the foregoing, OCR found that the District failed to respond adequately to notice that the Student was subjected to a hostile environment based on her Jewish ancestry, in violation of the Title VI regulations.

## **Conclusion**

This concludes OCR's investigation of this complaint and 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.

Please be advised that the District may not harass, coerce, intimidate, retaliate, or discriminate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this occurs, they 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, OCR will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

OCR apologizes for the delay in processing this complaint and appreciates the District's cooperation throughout the investigation. If you have any questions, please contact Colleen Brooks, the attorney assigned to this complaint, at (303) 844-0196 or by e-mail at [Colleen.Brooks@ed.gov](mailto:Colleen.Brooks@ed.gov).

Sincerely,

Michael D. Todd  
Supervisory Attorney

Enclosures – Resolution Agreement (signed)

Cc: Mrs. Erica Modzelewski  
School Principal  
*Via e-mail only to [emodzelewski@kyrene.org](mailto:emodzelewski@kyrene.org)*

Mr. Jordan Ellel  
Tempe Tri-District Legal Counsel  
*Via e-mail only to [jellel@tuhsd.k12.az.us](mailto:jellel@tuhsd.k12.az.us)*

Ms. Jennifer MacLennan  
Attorney for the District  
*Via e-mail only to [maclennan@gustlaw.com](mailto:maclennan@gustlaw.com)*



Ms. Kathy Hoffman  
Arizona Superintendent of Public Instruction  
*Via e-mail only to [adeinbox@azed.gov](mailto:adeinbox@azed.gov)*