

MaryEllen Elia, Commissioner
Richard Trautwein, General Counsel
New York State Education Department
89 Washington Avenue
Albany, New York 12234

August 9, 2016

Re: U.S. Department of Education Dear Colleague Letter on Anti-Muslim
Bullying

Dear Commissioner Elia and Mr. Trautwein:

Schools provide safe spaces for children to learn, grow, and thrive as they prepare to face the world as adults, and school administrators are uniquely positioned to shape these experiences. For this reason, we write to draw your attention to a critically important “Dear Colleague” Letter the United States Department of Education issued on December 31, 2015 (hereafter “DCL”). The DCL urges you and your colleagues “to ensure that your schools and institutions of higher education are learning environments in which students are free from discrimination and harassment based on their race, religion, or national origin.” We urge you to review the DCL and implement appropriate measures for addressing discrimination and harassment.

This is a critical time for religious minority communities targeted by hatred and violence. Crimes motivated by bias, and particularly bias against minority faith communities, are occurring at an alarming rate. Over the course of the last eight months, Muslim Advocates has learned of over 100 hate crimes involving Muslim victims or those perceived to be Muslim. In this climate of hatred and bigotry fueled by public figures and the media, Muslim, Sikh, Hindu, Jewish, Arab, and South Asian students face unique challenges.

For example, American Muslim students across the U.S. have reported harassment, bullying, and intimidation by their peers because of their race or religion or both, causing many of them to fear going to school. Muslim Advocates has also heard directly from parents sharing their concerns about teachers and administrators voicing bigoted views on Muslims and Arab Americans. To name a few examples:

- A twelve year old student in Texas was told by his teacher, in front of classmates, “[We all think you’re a terrorist.](#)”
- A [Georgia teacher asked a student wearing a headscarf](#) if she was carrying a bomb.
- Another student in New Jersey, who also wears a headscarf, had her photograph taken surreptitiously at school by classmates and it [was posted on social media with the word “ISIS” emblazoned across it.](#)
- One student in Wisconsin has been called “Bin Laden” at least three times a week and teachers have said or done nothing to stop it.

- An Ohio 7th grade [student threatened to shoot and kill a Muslim schoolmate](#), calling him a “terrorist” and a “towel head.”

School districts are obligated to do more to address these incidents, and to prevent future hateful and bigoted incidents from occurring. If such incidents are not addressed appropriately, a student’s ability to learn in a safe environment is jeopardized and further undermines the emotional well-being of students who fear potential harassment or bullying at school.

The failure to address harassment and discrimination against Muslim, Arab, and South Asian students in your district leads to potential civil liability under Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin.¹ Additionally, Muslim, Arab, and South Asian students who have been harassed and discriminated against in your schools because of their race, color, national origin, or religion could also bring claims against school administrators in their official capacities under 42 U.S.C. § 1983 for violations of the 14th Amendment’s Equal Protection and Due Process clauses.

We hope that you and your colleagues will immediately take the steps necessary to prevent and address discrimination and harassment against students of all faiths and backgrounds. There are many resources available from a variety of federal agencies that provide guidance on discussing and combatting anti-Muslim hate and bullying in schools. I have included for your reference a recent resource on combating discrimination against students prepared jointly by the Department of Justice, the Department of Education, and the White House Initiative on Asian Americans and Pacific Islanders.

Thank you in advance for your consideration. Please do not hesitate to contact Muslim Advocates if you have any questions or would like to discuss these issues further.

Sincerely,



Madihha Ahussain
415-692-4932
madihha@muslimadvocates.org

Enclosures

¹ Although Title VI does not explicitly prohibit discrimination on the basis of religion, Title VI is implicated when Muslim and Sikh students experience bigotry at school because they often do so on the basis of actual or perceived shared ancestry or ethnicity.

U.S. DEPARTMENT OF EDUCATION

December 31, 2015

Dear Colleagues:

On the eve of this new year, we are writing to enlist your help, as educational leaders, to ensure that your schools and institutions of higher education are learning environments in which students are free from discrimination and harassment based on their race, religion, or national origin. A focus on these protections, while always essential, is particularly important amid international and domestic events that create an urgent need for safe spaces for students.

Today, our country and the broader international community are facing a range of difficult and complicated issues, including how to provide protection and assistance to the historic levels of vulnerable individuals displaced from their homes due to conflict and persecution. This includes millions of families who are fleeing violence in Syria. These refugees have captivated so much attention and are fleeing precisely the type of senseless and violent attacks that have occurred here in the United States and elsewhere recently. The United States must continue to welcome these refugees seeking safety and a new start in life. At the same time, we remain deeply committed to safeguarding the safety and security of the American people. We can and must do both.

As we stand by our principles as a nation and continue to welcome refugees to our communities, we also must be vigilant about maintaining safe, respectful, and nondiscriminatory learning environments for all students in our schools and institutions. Of course, discrimination and harassment are not new, and they are not limited to the treatment of refugees or those who are associated with them.

We support your efforts to ensure that young people are not subjected to discrimination or harassment based on race, religion, or national origin, particularly at this time when fear and anger are heightened, and when public debate sometimes results in the dissemination of misinformation. Such inappropriate conduct in schools can take many forms, from abusive name-calling to defamatory graffiti to physical violence directed at a student because of a student's actual or perceived race or ancestry, the country the student's family comes from, or the student's religion or cultural traditions. If ignored, this kind of conduct can jeopardize students' ability to learn, undermine their physical and emotional well-being, provoke retaliatory acts, and exacerbate community conflicts.

We cannot permit discrimination or harassment in schools against students based on their actual or perceived race, religion, or national origin.* Moreover, because parents and students look to you for leadership, their hearing from you that such conduct is unconditionally wrong and will not be tolerated in our schools will make a real difference. In response to recent and ongoing issues, we also urge you to anticipate the potential challenges that may be faced by students who are especially at risk of harassment — including those who are, or are perceived to be, Syrian, Muslim, Middle Eastern, or Arab, as well as those who are Sikh, Jewish, or students of color. For example, classroom discussions and other school activities should be structured to help students grapple with current events and conflicting viewpoints in constructive ways, and not in ways that result in the targeting of particular students for harassment or blame.

In November, we convened campus leaders from around the country — university and college presidents, faculty, legal experts, and student leaders — to tackle the issue of racial harassment on campuses and to lay out solutions to foster supportive educational environments. Some of the steps identified by these leaders were shared in a [previously published commentary](#), and we draw from their collective wisdom here as well in offering some steps that can help prevent any form of harassment and discrimination on the basis of race, religion, or national origin. We urge you — whether you lead a college or a pre-K-12 school — to use this moment as an opportunity to take steps that increase tolerance.

To be very clear, working to maintain safe learning communities does not, and must not, mean chilling free expression about the issues of the day — this work is about taking thoughtful steps to create space for open and constructive dialogue, while dealing swiftly with actions that create an unlawful hostile environment. Protecting free speech means protecting the ability of your students, faculty, staff, and members of the public to hold and express views that may be at odds with your institution’s strongly held values. Schools should not ignore the dissonance that this creates, but should instead consciously use these moments as opportunities for reflection, discussion, and increased understanding.

* A variety of federal laws prohibit such discrimination and harassment, although the authority to enforce those laws is divided among different Federal agencies. For example, the Department of Education and Department of Justice both enforce Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin by any entity (public or private) receiving Federal financial assistance. 42 U.S.C. § 2000d. Even though Title VI does not expressly prohibit discrimination based solely on religion per se, discrimination against persons belonging to religious groups violates Title VI when the discrimination is based on the religious group’s actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members’ religious practices. In addition, the Department of Justice enforces Title IV of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, national origin, and religion by public schools and colleges, 42 U.S.C. § 2000c-6, and the Equal Educational Opportunities Act, which prohibits discrimination on the basis of race, color, or national origin by public schools, 20 U.S.C. § 1703.

Working together with students, families, and community groups, schools can create safe learning environments in which all students are equally able to participate in a robust exchange of ideas by, for example:

- Valuing the diverse linguistic, cultural, racial, and ethnic backgrounds of all students.
- Encouraging students on all sides of an issue to express disagreement over ideas or beliefs in a respectful manner.
- Communicating a clear message to students that harassment and bullying will not be tolerated, and that school is a safe place for all students.
- Creating opportunities — including by engaging interfaith leaders or campus ministries and others in the school or community — for students to enhance their cultural competency by being exposed to various cultures and faiths, such as through co-curricular activities in which students work on service projects so they discover commonalities and appreciate differences.
- Encouraging students, staff, and parents to report all incidents of harassment and bullying so that the school can address them before the situation escalates.
- Having a system in place to intervene if a student’s conduct could endanger others.
- Ensuring that information about the steps outlined above are easily understandable for all students, families, and school or college personnel — including those from diverse linguistic backgrounds.

This work is admittedly hard, but we have the responsibility and the opportunity to challenge ourselves to go beyond our past efforts and create settings where our foundational American values of inclusiveness, religious tolerance, and welcoming refugees and other immigrants are openly embraced. Together, we can make sure that our nation’s students do not experience discrimination or harassment and, instead, are getting a good education in environments that are structured to enhance learning and produce open and constructive exchanges of ideas. Succeeding in this effort is essential to expanding opportunity for all students.

Below, we provide a short list of government resources that can help you engage in these efforts. If you have questions or need assistance in these matters, please let us know. Thank you for your help on this critical issue.

Sincerely,

/s/

Arne Duncan

/s/

John B. King, Jr.

Addendum

Resources to assist school officials, educators, students, families, and communities in promoting more positive school climates include:

- The National Center on Safe Supportive Learning Environments, safesupportivelearning.ed.gov, offers tools, training, and technical assistance to schools, institutions of higher education, families, and communities to contend with many factors that affect the conditions for learning and impede the building and maintenance of safe and supportive learning environments, such as bullying, harassment, and violence;
- StopBullying.gov, www.stopbullying.gov, serves as a clearinghouse for all Federal anti-bullying resources and information about State laws and model policies to stop bullying and protect children; and
- The Department of Education has collected resources for immigrants, refugees, asylees, and other new Americans at www.ed.gov/about/overview/focus/immigration-resources.html.

Additional resources about bullying and harassment of students on the basis of race, religion, and national origin include:

- U.S. Department of Justice, Community Relations Service, *Twenty Plus Things Schools Can Do to Respond to or Prevent Hate Incidents Against Arab-Americans, Muslims, and Sikhs*, www.justice.gov/crs/pubs/20-plus-things.pdf;
- U.S. Department of Education, Office for Civil Rights, *Checklist for a Comprehensive Approach to Addressing Harassment*, www.ed.gov/oct/checklist.html;
- New York Office of Temporary and Disability Assistance, Bureau of Refugee and Immigrant Assistance, *Anti-Bullying Instructional Resources*, otda.ny.gov/programs/bria/documents/WtOS-Anti-Bullying-Resource.pdf; and
- U.S. Department of Justice, Community Relations Service, *Programs for Managing School Multicultural Conflict*, www.justice.gov/crs/pubs/school-multicultural-conflict.pdf.

Federal resources describing students' rights and schools' obligations under Federal laws addressing bullying and harassment on the basis of race, religion, and national origin include:

- U.S. Department of Education, Office for Civil Rights, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010), www.ed.gov/oct/letters/colleague-201010.pdf;

- U.S. Department of Education, Office for Civil Rights, *Dear Colleague Letter: First Amendment* (July 28, 2003), www.ed.gov/ocr/firstamend.html;
- U.S. Department of Education, Office for Civil Rights, *Investigative Guidance: Racial Incidents and Harassment Against Students at Educational Institutions* (Mar. 10, 1994), www.ed.gov/ocr/docs/race394.html;
- U.S. Department of Justice, Civil Rights Division, *Federal Protections Against National Origin Discrimination* (Aug. 2010), www.justice.gov/crt/publications/natorigin2.pdf;
- U.S. Department of Justice, Civil Rights Division, *Protecting the Religious Freedom of All: Federal Laws Against Religious Discrimination* (Aug. 2015), www.justice.gov/crt/combating-religious-discrimination-and-protecting-religious-freedom-10; and
- U.S. Department of Justice, Civil Rights Division, *Harassment Fact Sheet*, www.justice.gov/crt/about/edu/documents/eosaapimassa.pdf.

Some of the resources above are available in other languages:

- U.S. Department of Education, Office for Civil Rights offers many of its resources in other languages at www.ed.gov/ocr/docs/howto-index.html;
- U.S. Department of Justice, Civil Rights Division, *Federal Protections Against National Origin Discrimination* (Aug. 2010) is available in several languages at <http://www.justice.gov/crt/publications>;
- U.S. Department of Justice, Civil Rights Division, *Harassment Fact Sheet* is available in Punjabi at www.justice.gov/crt/about/edu/documents/eosaapimassapunjabi.pdf; and
- The White House Initiative on Asian Americans and Pacific Islanders and its partners have translated basic information from StopBullying.gov into several AAPI languages at <https://acttochange.org/#resources>.



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights



White House Initiative on
Asian Americans and Pacific Islanders

Combating Discrimination Against AANHPI and MASSA Students

The U.S. Department of Justice's Civil Rights Division (CRT) and the U.S. Department of Education's Office for Civil Rights (OCR) enforce federal civil rights laws in public and federally funded schools at all educational levels. These laws protect all students, including Asian American, Native Hawaiian, and Pacific Islander (AANHPI) and Muslim, Arab, Sikh, and South Asian (MASSA) students, from discrimination based on race, color, and national origin (including language and shared ethnic characteristics). CRT also enforces prohibitions on religious discrimination in public schools. Schools must take immediate and appropriate action to respond to complaints of discrimination, including harassment or bullying based on race, color, national origin, or religion. The following are examples of action, or in some cases inaction, by school officials that could violate the laws enforced by CRT or OCR:

- *A Korean-American student tells her principal that a group of Korean students has repeatedly stolen her Asian history textbook and said that she is not a "real Korean" because she only speaks English. The principal tells her that because the students who are bothering her are also Korean, it was probably a misunderstanding among friends and takes no action.*
- *A Sikh student wears his turban to school. A teacher tells the student he needs to remove the turban for his own safety, given recent violence targeting Muslims in the region. The student informs the teacher that he is Sikh. When he refuses to remove his turban, he is suspended.*
- *A student from China receives an out-of-school suspension for violating the school's code of conduct. Before meeting with the assistant principal to discuss the suspension, the student's parent requests an interpreter, but school administrators do not arrange for one. When the parent arrives for the meeting, there is no interpreter and the assistant principal proceeds with the meeting.*
- *During a lesson about 9/11, classmates of a Muslim middle school student call him a terrorist and tell him to go back to his country. The teacher tells the class that only some Muslims are terrorists, and asks the student why Muslims have not denounced the terrorist attacks of 9/11. The student complains to a school official about the statements by his teacher and classmates, but the school official take no steps to respond.*
- *A high school provides English learner (EL) services only to EL students who speak Spanish. When Punjabi-speaking students inquire about EL services to assist them with their advanced placement (AP) classes, the principal tells them that they cannot both receive EL services and take AP classes.*
- *A group of Asian students is hit and taunted every week in gym class by other students who say, "Asians are supposed to be good at math—not basketball." When they complain to the teacher, they are told that the best response is to ignore the other students and to focus on doing better in gym class.*

Anyone with information about discrimination occurring in schools may file a complaint by contacting:

U.S. Dept. of Justice, Civil Rights Division
Educational Opportunities Section
Email: education@usdoj.gov
Telephone: 202-514-4092 or 877-292-3804
TTY: 800-514-0383

U.S. Dept. of Education, Office for Civil Rights
Email: ocr@ed.gov
Telephone: 202-453-6100 or 800-421-3481
TDD: 800-877-8339
Language Assistance: 800-USA-LEARN (800-872-5327)

OCR also offers technical assistance to the public and will respond to inquiries about schools' obligations and the rights of students and parents under the laws that OCR enforces.

For more information about the laws that CRT and OCR enforce, including those prohibiting discrimination based on disability and sex (including gender identity and nonconformity with sex stereotypes), please visit us at www.justice.gov/crt/edo and www.ed.gov/ocr.