



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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Attorney General

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Thursday, December 14, 2023

Dear Superintendent,

The scourge of antisemitism has been rising for many years and has recently intensified in the wake of the barbaric terrorist attack against Israel on October 7th.

I recently returned from a trip to Israel where I bore witness to evil. I watched videos that Hamas terrorists recorded as they calmly and joyfully committed unspeakable acts of brutality. I was disappointed to return home only to encounter misinformation about, indifference to, and even celebrations of Hamas's actions in some Virginia schools.

It is an unfortunate reality that our educational institutions are not immune to the world's oldest form of bigotry. On November 16, I sent a letter to Virginia college and university presidents urging decisive action and unequivocal condemnation of the growing antisemitism on Virginia college campuses.¹ Regrettably, manifestations of antisemitism, hate, and intolerance have also surfaced within our K-12 educational institutions. My Office of Civil Rights has noted a rising influx of inquiries and complaints concerning antisemitic discrimination and harassment in these schools.

Countless Jewish families and students in our Commonwealth feel threatened and unsupported. Some schools and divisions have even promoted biased materials or stood by as staff and students spread false narratives and shout violent anti-Jewish slogans. This conduct harms our students. This is unacceptable.

After the brutal terrorist attacks on our homeland on September 11, 2001, the federal government focused its efforts on combating anti-Islamic discrimination. But today, the dark specter of antisemitism has arisen with terrifying force and now haunts our streets, our college campuses, and our public schools. All of us – government officials and private citizens – must combat antisemitism with all the tools at our disposal and drive it from our society. Our schools train our children to become good citizens devoted to serving the common good. They therefore play a critical role in beating back the forces of antisemitism.

As the educators of Virginia's children, you and your staff are entrusted with a unique responsibility. As public servants, you *must* foster an environment that is free of all forms of discrimination, harassment, and intimidation on the basis of religion not only because the law commands it, but because our plural society requires it.

I urge you to consider the following legal principles as you confront the rising tide of antisemitism. Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funds—which includes every single public school in the Commonwealth of Virginia—from discriminating on the basis of race, color, and

¹ <https://www.oag.state.va.us/media-center/news-releases/2645-november-16-2023-attorney-general-miyares-urges-virginia-college-and-university-presidents-to-address-rise-of-antisemitism-on-campus>

national origin. That prohibition requires the Commonwealth’s public schools to take measures reasonably calculated to remedy discriminatory hostile environments. Although Title VI does not prohibit discrimination solely on the basis of religion, the U.S. Department of Education recently reiterated that it interprets Title VI to prohibit “discrimination, including harassment, based on [a student’s] actual or perceived: (i) shared ancestry or ethnic characteristics or (ii) citizenship or residency in a country with a dominant religion or distinct religious identity.” Failure to protect students from antisemitic “harassment that creates a hostile environment” therefore could expose your school division to a federal enforcement action.²

Here in the Commonwealth, the Virginia Human Rights Act also prohibits discrimination on the basis of religion and national origin in educational institutions.³ This includes discriminatory denial of “any of the accommodations, advantages, facilities, services, or privileges” provided by an educational institution.⁴

To assist in recognizing and combating antisemitism in the Commonwealth, in Chapter 471 of the Acts of Assembly of 2023 the Virginia General Assembly adopted the non-legally binding International Holocaust Remembrance Alliance Working Definition of Antisemitism “as a tool and guide for training, education, recognizing, and combating antisemitic hate crimes or discrimination.”⁵ Most helpful to users, the contemporary examples aid in identifying both traditional antisemitic tropes and modern antisemitism often involving demonization, delegitimization, or double standards towards Israel.⁶

Schools and school divisions should understand the protections and limitations of the First Amendment in the K-12 setting. Although “students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate[,] ... the constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings and ... must be applied in light of the special characteristics of the school environment.” *Morse v. Frederick*, 551 U.S. 393, 396–97 (2007) (cleaned up). Student conduct that “materially disrupts classwork or involves substantial disorder or invasion of the rights of others is ... not immunized by the constitutional guarantee of freedom of speech.” *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 513 (1969). Schools may therefore regulate and prohibit conduct that “materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school,” *id.* at 509 (cleaned up), even if the government could not regulate or prohibit that conduct outside of the school context, *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988).

Moreover, the First Amendment does not protect in any context speech that is directed to inciting or producing imminent lawless action, and which is likely to incite or produce such action. *See Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). I strongly recommend that you review your policies to protect your students from unlawful incitement beyond the bounds of the First Amendment. Nor does the First Amendment protect criminal conduct. If you have students who commit assaults, vandalism, or criminal trespass, they can and should be held criminally accountable. You can do this by working with law enforcement and your jurisdiction’s Commonwealth’s Attorney. If students are threatened, you can

² www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf

³ Va. Code § 2.2-3900(B)(1).

⁴ Va. Code § 2.2-3904(B).

⁵ <https://law.lis.virginia.gov/uncodifiedacts/2023/session1/chapter471/>

⁶ <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

inform them of how they can obtain protective orders.

Your students are also subject to codes of student conduct with regard to bullying and harassment. I urge you to review your policies, student codes of conduct, and enforcement procedures to ensure that violations that are not otherwise protected speech will be addressed quickly and effectively and that students bringing attention to violations are protected from retaliation.

Finally, on October 31, Governor Glenn Youngkin issued an Executive Directive instructing the Superintendent of Public Instruction to “collaborate with local school division superintendents to promote awareness of and access to resources promoting the safety of their students, including Jewish and Muslim students” and “ensure that school divisions are duly informed about Virginia’s adoption of the International Holocaust Remembrance Alliance Working Definition of Antisemitism.”⁷ In light of the Governor’s Executive Directive, I encourage you to review the IHRA Definition, “including the contemporary examples of antisemitism set forth therein, to serve as a tool and guide for the purposes of training, education, identification, and the proactive prevention of antisemitism and discrimination.”⁸

In February, I created the first Antisemitism Task Force to monitor, gather information, educate, and investigate instances of antisemitism in the Commonwealth. My Task Force stands ready to assist as you consider more support for students and the policy changes discussed above.

Now is not the time for moral equivalency or half measures. Now is the time for moral courage and leadership.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason S. Miyares".

Jason S. Miyares
48th Attorney General of Virginia

⁷ <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED6-Combating-Antisemitism.pdf>

⁸ Chapter 471 of the Act of the Assembly of 2023.