



Asian American
Legal Defense and
Education Fund



June 10, 2024

VIA EMAIL

Chancellor David Banks
New York City Public Schools
52 Chambers Street
New York, New York 10007

Dear Chancellor Banks,

We write jointly to express our organizations' objections to New York City Public Schools' ("NYCPS") guidance on political expression in schools and statements you made in your recent testimony before the House Committee on Education and the Workforce.

We represent three civil rights organizations with deep roots in New York City:

The Asian American Legal Defense and Education Fund ("AALDEF") is a New York-based national organization founded in 1974 that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all.

The Council on American-Islamic Relations, New York ("CAIR-NY") is a civil rights organization whose mission is to protect civil rights, enhance understanding of Islam, promote justice, and empower Muslim Americans. CAIR-NY focuses its legal services, advocacy, and education efforts across the state of New York.

The New York Civil Liberties Union ("NYCLU"), the state affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with nine offices across New York state and more than 80,000 members and supporters. The NYCLU's mission is to defend and promote the fundamental principles, rights, and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York.

Since October 7, 2023, we have collectively fielded dozens of requests for help from NYCPS teachers, students, and parents. We have become increasingly concerned that despite NYCPS's public commitment to ensuring that "learning and work environments are safe, supportive, and free from hate or intolerance," district officials have provided guidance to administrators that has led to routine and potentially unconstitutional censorship of pro-Palestine viewpoints among students and staff. This guidance cites to Chancellor's Regulation D-130 but

goes far beyond the conduct contemplated by the regulation's text and has been used to discipline school staff for speaking out on behalf of Palestinians. Even where it has not been formally enforced, this guidance has led to an atmosphere of distrust, fear, and self-censorship.

Furthermore, NYCPS has failed to support students and educators with Palestinian, Middle Eastern, Arab, South Asian, and Muslim backgrounds who have faced harassment and discrimination based on their actual or perceived national origin, raising Title VI and Title VII concerns. Your May 8 testimony was conspicuously silent on the rights of these teachers and students and those who have been harassed for their views in support of Palestinians.

Balancing NYCPS's constitutional obligations with its legal duty to foster safe and supportive school environments is a challenge, but not an insurmountable one. For NYCPS to "meet the moment," it is essential to promote an atmosphere of transparency, communication, and bridge-building and resist calls for selective censorship and punishment of students and staff.

I. NYCPS's Misapplication of Chancellor's Regulation D-130 Has Led to Routine Censorship of Speech in Support of Palestinians

Earlier this spring, NYCPS sent guidance to principals that suggests that NYCPS is moving to further censor speech in support of Palestinians. The guidance cites to the first line of Chancellor's Regulation D-130, which states that "school buildings are not public forums for purposes of community or political expression."¹ The regulation further provides that "[s]chool facilities, equipment and supplies may not be used" on behalf of candidates and political organizations and "while on duty or in contact with students, school personnel may not wear buttons, pins, articles of clothing, or any other items" advocating for a particular candidate or political organization.² As such, D-130 only applies to electoral politics.

The recent NYCPS guidance far exceeds the scope of D-130, stating that "school staff should not use school facilities, equipment or supplies to promote political activities" and "staff should not wear or display items advocating their own personal political points of view or otherwise engage in expression of their own personal political viewpoints while on school grounds." The term "political" is not defined, but school administrators have interpreted it to include ideological expression both inside and outside the classroom related to the rights of Palestinians. While the guidance purports to describe NYCPS's "general policy" that "students should learn in a politically neutral environment," this is misleading: no regulation addresses employee speech on non-electoral political issues or provides limitations on teaching controversial topics.

¹ REGULATION OF THE CHANCELLOR D-130, USE OF SCHOOL BUILDINGS BY CANDIDATES, ELECTED OFFICIALS AND POLITICAL ORGANIZATIONS, AND CONDUCT OF SCHOOL EMPLOYEES AND OFFICERS WITH RESPECT TO POLITICAL CAMPAIGNS AND ELECTIONS 1 (Apr. 29, 2021), <https://www.schools.nyc.gov/docs/default-source/default-document-library/d-130-4-29-2021-final-posted.pdf>.

² *Id.* at 3, 4.

Such a broad prohibition on political expression – or even to insist on absolute neutrality – is short-sighted and futile. Not all controversial topics can be taught by carefully counterbalancing claims against one another, as though the truth will emerge precisely in the middle. Instead, schools should encourage the free exchange of ideas. Such exchanges are essential to the learning experience. Public issues and social policies should be discussed in schools through structured and age-appropriate conversations in classes, and students and teachers will inevitably engage in dialogue in the cafeteria, the playground, and the teacher’s lounge. Students should be taught, through instruction and well as role modeling, how to exchange ideas in a respectful manner by listening to and engaging with their teachers and peers. The current crisis in Gaza provides important opportunities for this sort of civic education.

School administrators are not wrong to urge that civic education should be pursued with sensitivity, open-mindedness, and balance, where possible. But if rules are imposed that aspire toward reasoned discussion respecting social and political issues, they must, at the least, be uniformly and equally applied. The fact that such policies are exclusively enforced against one viewpoint³ or that schools selectively depart from standard policy can be evidence of viewpoint discrimination.⁴

Since October 7, our organizations have tracked multiple cases of censorship of pro-Palestine speech in schools, including cases where NYCPS relied on its sweeping interpretation of D-130 to discipline educators. For example, administrators told one Palestinian teacher that she cannot wear apparel with images of watermelons, the Palestinian flag, or olive trees because they are considered “offensive” and “political.” Another teacher was told to remove her watermelon scarf. In yet another school, the principal directed a teacher to erase the phrase “All Eyes on Rafah” from the whiteboard in his classroom.

Teachers showing support for Israel have not, to our knowledge, faced the same level of scrutiny or censorship. Further, teachers who have equated all Palestinians with Hamas, a false and discriminatory comparison, have similarly been allowed to continue to teach with no discipline. Such unequal treatment violates First Amendment principles prohibiting viewpoint discrimination.

NYCPS censorship is not limited to teachers. This is particularly concerning because of the higher constitutional protection for student speech. The Supreme Court has repeatedly affirmed that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”⁵ Students’ personal speech may not be censored unless a school can show that it would “materially and substantially interfere with the requirements of appropriate discipline in

³ *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 812–13 (1985) (explaining that claim that organizations participating in charity drive were limited to those that provide direct health and welfare services was undercut by fact that organizations that do not provide these services were, in fact, included); *see also* *Ridley v. Massachusetts Bay Transp. Auth.*, 390 F.3d 65, 87 (1st Cir. 2004) (“[W]here the government states that it rejects something because of a certain characteristic, but other things possessing the same characteristic are accepted, this sort of underinclusiveness raises a suspicion that the stated neutral ground for action is meant to shield an impermissible motive.”).

⁴ *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 874 (1982).

⁵ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

the operation of the school.”⁶ Importantly, neither a “desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint” nor an “urgent wish to avoid . . . controversy” are sufficient to satisfy this standard.⁷ While schools may exercise greater control over school sponsored speech, the Second Circuit has clearly held that schools may not engage in viewpoint discrimination.⁸

NYCLU is aware of multiple cases where school administrators have removed or restricted student art expressing solidarity with Palestinians. In a similar case involving student work, the Second Circuit held that “a manifestly viewpoint discriminatory restriction on school-sponsored speech is, *prima facie*, unconstitutional, even if reasonably related to legitimate pedagogical interests.” ^[OBJ]

NYCLU has also represented students who were suspended for using the phrase “From the River to the Sea” in school. In your testimony before Congress, you stated unequivocally that, in the view of NYCPS, the political slogan “From the River to the Sea, Palestine Will Be Free” is antisemitic. Coming as it did during a politicized committee hearing, your categorization suggests that NYCPS is censoring student speech in response to external political pressure.

In order for school district officials to justify the censorship of student expression, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.⁹ The phrase “From the River to the Sea” has a wide range of longstanding interpretations which do not call for harm or displacement of Jewish people, including: as a call for solidarity amongst Palestinian people and their allies, a call for Palestinian self-determination, and a criticism of the internationally recognized military occupation led by the Israeli government.¹⁰

It is wrong for school officials to take this statement out of context and to prohibit it in all cases, particularly where use of the phrase may be grounds for student suspension. We are especially concerned with how this affects the ability of Palestinian, Middle Eastern, Arab, South Asian, and Muslim students and teachers to express their personal and political views in this moment of extreme public concern.

While we appreciate your acknowledgment in the Congressional hearing that NYCS cannot simply “discipline its way out of” antisemitism in schools and “[t]he true antidote to ignorance and bias is to teach,” the increased disciplinary action against student and teacher speech suggests that NYCPS is responding to political pressure from outside actors, most notably the House Committee on Education and the Workforce. The hearings are a blatantly partisan attempt to undermine institutions of higher education and public schools that strongly echo the excesses of the McCarthy

⁶ *Id.* at 509.

⁷ *Id.* at 509–10.

⁸ Peck *ex rel.* Peck v. Baldwinville Cent. Sch. Dist., 426 F.3d 671, 633 (2d Cir. 2005).

⁹ *Tinker*, 393 US at 509.

¹⁰ Maha Nassar, ‘From the River to the Sea’ Doesn’t Mean What You Think it Means, FORWARD (Dec. 3, 2018), <https://forward.com/opinion/415250/from-the-river-to-the-sea-doesnt-mean-what-you-think-it-means/>; Yousef Munayyer, *What Does ‘From the River to the Sea’ Really Mean*, JEWISH CURRENTS (June 11, 2021), <https://jewishcurrents.org/what-does-from-the-river-to-the-sea-really-mean>.

era.¹¹ NYCPS should not embolden critics by silencing Palestinian and pro-Palestine voices in public schools and should hold true to its stated commitment to engage and educate students in constructive dialogue.

II. Targeting Student Activism in Support of Palestinians Could Also Constitute Impermissible Viewpoint Discrimination

The guidance NYCPS distributed to principals also directed schools not to “distribute fliers promoting or inviting participating in walkouts, protests, demonstrations, etc.” Similarly, we understand that students at some schools were not permitted to distribute fliers promoting the City-Wide School Walk-Out on November 9 inside the building and were instead directed to pass out fliers outside the building after dismissal. If all materials promoting walkouts were subject to the same restriction, the guidance could be considered a valid “time, place, and manner” regulation of the distribution of fliers and other written materials.¹² Historically, however, NYCPS has allowed students to distribute fliers promoting other protests and walkouts. As recently as May 1, students at some schools were apparently permitted to post fliers promoting a walkout opposing sweatshops.

If all walkouts are not subject to the stated restriction, this is further evidence of viewpoint discrimination against speech in support of Palestinians. It is critical that NYCPS afford student speech in support of Palestine the same protections that other student activists enjoy, enforcing NYCPS’s policies in a content-neutral manner.

III. NYCPS’s Targeting of Speech in Support of Palestinians Harms Palestinian, Middle Eastern, Arab, South Asian, and Muslim Students and Teachers

We have received multiple complaints from Palestinian, Middle Eastern, Arab, South Asian, and Muslim students who have experienced harassment and discrimination from staff and students alike. In one instance, the NYCLU successfully appealed the suspension of an Egyptian student who was suspended after a staff member misinterpreted an Arabic phrase he was using and assumed he was cursing at her. Not only was this student suspended from school, his punishment and subsequent actions by the district have had the effect of hindering his participation in a school community he once enjoyed. Harmful actions like this have a direct effect on the ability of Palestinian, Middle Eastern, Arab, South Asian, and Muslim students to feel safe in school and to experience an education free from harassment.

Under Title VI, NYCPS is obligated to protect all students—including Palestinian, Middle Eastern, Arab, South Asian, and Muslim students—from race, national origin, and ethnicity-based discrimination. The federal Department of Education Office of Civil Rights (“OCR”) recently issued Title VI guidance stating that “discrimination” includes a hostile environment created by unwelcome conduct based on race, color, or national origin that, based on the totality of

¹¹ Dana Goldstein & Sarah Mervosh, *House Republicans’ Next Target: Reports of Antisemitism in K-12 Schools*, NY TIMES (May 7, 2024), <https://www.nytimes.com/2024/05/07/us/house-gop-antisemitism-education.html>; Annie Karni, *House Republicans to Broaden Higher Education Inquiry Beyond Antisemitism*, NY TIMES (Jan. 5, 2024), <https://www.nytimes.com/2024/01/05/us/politics/house-republicans-antisemitism-colleges-harvard.html>.

¹² M.B. ex rel. Martin v. Liverpool Central Sch. Dist., 487 F. Supp. 2d 117, 133 (N.D.N.Y. 2007).

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 a school's education program or activity. Failure to remedy a learning environment that is hostile toward these students is grounds for a Title VI investigation.

For example, OCR's guidance states that the agency would likely open an investigation if an Arab student's hijab was torn off and stomped on and a teacher made stereotyping comments regarding her religion.¹³ OCR further states that "in some cases, a hostile environment requiring appropriate responsive action may result from a single severe incident."¹⁴ Title VI requires NYCPS to respond to and investigate harassment and bullying against Palestinian, Middle Eastern, Arab, South Asian, and Muslim students with the same urgency as it responds to reports of antisemitic or any other discriminatory harassment. Failure to do so may be grounds for OCR to open a Title VI differential treatment investigation.¹⁵

In addition, Palestinian, Middle Eastern, Arab, South Asian, and Muslim teachers have been harassed and reprimanded in a possible violation of their rights under Title VII. For example, an Arab American teacher was forced to resign after she was doxxed and harassed daily without any response from her school. Similarly, a Palestinian American teacher has faced harassment – including numerous death threats – and investigation after she was targeted by tabloids for posting a map of the Arabic-speaking world in her Arab Culture class. NYCPS staff have been given strict instructions not to speak to press in support of their colleagues, but a Jewish employee has repeatedly been quoted criticizing NYCPS for allegedly failing to address antisemitism with no apparent consequences.

Such differential treatment of Arab American and Palestinian educators raises serious concerns under Title VII, which protects teachers from ethnicity and national origin-based harassment and punishment. Importantly OCR's May 7 guidance clarifies that classroom teaching "that criticizes the government of Israel's treatment of non-Jewish people...would not likely implicate Title VI."¹⁶ NYCPS must differentiate between a curriculum that criticizes governments and teaching that discriminates against students based on their race, color, national origin, ancestry, or ethnicity.

IV. Conclusion

In your testimony to Congress, you committed to "meet the moment" with "safety, engagement, and education." In practice, however, NYCPS is suppressing speech supporting Palestinian rights, failing to protect Palestinian, Middle Eastern, Arab, South Asian, and Muslim

¹³ Dep't of Educ. Off. of Civil Rights, Civ. Rts., Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color or National Origin, Including Shared Ancestry or Ethnic Characteristics 7 (May 7, 2024), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf>, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf>.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 15–16.

¹⁶ *Id.* at 17.

students and staff while teaching some young people the dangerous lesson that their voices, identities, and experiences are not valued or welcomed in public schools.

To address this critical issue, NYCPS must immediately rescind and clarify misleading guidance to principals and refrain from disciplining staff or censoring student speech by citing to D-130. NYCPS must also clarify that viewpoint discrimination is never acceptable in public schools and pro-Israel and pro-Palestine speech must be treated similarly. Lastly, NYCPS must provide clear instructions to schools that Palestinian symbols or slogans are not presumptively antisemitic.

We also ask that you instruct district superintendents and principals to exercise restraint in using discipline against student's who participate in peaceful protest, including those who plan and participate in walkouts and other protest activities. Given the size and diversity of the district, we are concerned that students will be treated differently for participating, depending on their identity, where they go to school, the presence school safety officers in their schools, and the viewpoints of their specific principals and teachers.

Finally, the safety of Palestinian, Middle Eastern, Arab, South Asian, and Muslim students and faculty must receive the same attention and concern as that of Jewish and Israeli students and teachers. NYCPS must ensure that Palestinian, Middle Eastern, Arab, South Asian, and Muslim students are not harassed in school and must establish processes to monitor future incidents where harassment has occurred. As the leader of the largest and most diverse school district in the country, it is imperative that you set an example of support and inclusion.

Thank you for your time and consideration.

Best,



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