



OFFICE OF THE OMBUDSPERSON

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May 21, 2025

**CONFIDENTIAL**  
SENT VIA EMAIL

Marleen Sacks  
Law Office of Marleen L. Sacks  
4141 Rhoda Avenue  
Oakland, CA 94602  
Email: [marleen@lawofficeofmarleensacks.com](mailto:marleen@lawofficeofmarleensacks.com)

Greetings Marleen Sacks:

I am writing in response to your Level I Uniform Complaint, dated November 18, 2023 and amended December 2, 2023, which was filed with the Oakland Unified School District (District). In your Complaint you alleged the Palestinian flag had been raised on a Fremont High School (School) flagpole for a period of approximately one month. The District retained an independent, third-party investigator, Christina Petricca with the law firm Van Dermyden Makus, to investigate the Complaint.

**I. UCP COMPLAINT ALLEGATIONS**

Your Complaint alleges that on November 14, 2023, Substitute Teacher Zack Haber, posted a photograph on “X” (formerly known as Twitter) of a Palestinian flag raised on a flagpole in the School courtyard. On December 2, 2023, you submitted a written amendment to your November 18, 2023 complaint and alleged that the Palestinian flag had been raised on a School flagpole for a period of approximately one month. You further alleged that in the District’s December 1, 2023 response to your related California Public Records Act (CPRA) request for video surveillance of the Palestinian flag being raised and lowered on a School flagpole, a District Law Clerk (Law Clerk) informed you that video surveillance of the flag being raised was no longer available. You alleged the School’s actions “discriminate[d]” against Jewish students and staff.

**II. SCOPE OF UCP – LEGAL STANDARD**

The Oakland Unified School District has the responsibility to investigate complaints alleging unlawful discrimination, harassment, intimidation, or bullying in District programs and activities based on actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, immigration status, ethnic group identification, age, religion, marital or parental



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status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other characteristic identified in Education Code sections 200 and 220, Penal Code section 422.5, or Government Code section 11135, or based on association with a person or group with one or more of these actual or perceived characteristics.

Uniform complaint procedures shall also be used to address any complaint alleging the District's failure to comply with state and/or federal laws in Adult Education, After School Education and Safety, Agricultural Vocational Education, American Indian Education Centers and Early Childhood Education Program Assessments, Bilingual Education, California Peer Assistance and Review Program for Teachers, Career Technical and Technical Education and Career Technical and Technical Training, Career Technical Education, Child Care and Development, Compensatory Education, Consolidated Categorical Aid, Course Periods Without Educational Content, Economic Impact Aid, Education of Pupils in Foster Care, Pupils who are Homeless or former Juvenile Court school students, Every Student Succeeds Act (ESSA) and/or No Child Left Behind (NCLB) (Titles I-VII), English Learner Programs, Local Control Accountability Plans (LCAP), Migrant Education, Physical Education Instructional Minutes (for grades one through six), Pupil Fees, Reasonable Accommodation to a Lactating Pupil, Regional Occupational Centers and Programs, School Safety Plans, State Preschool, and Tobacco-Use Prevention Education (TUPE).

### **III. SUMMARY OF THE NATURE AND EXTENT OF THE INVESTIGATION**

A thorough and impartial investigation was conducted into the Complaint's allegations through which the investigator interviewed several witnesses and reviewed relevant documentary evidence. Further, corroborating evidence and witness credibility were considered. The investigator reviewed, compared, and analyzed evidence under a preponderance of the evidence standard to determine whether the allegations were with or without merit. "Preponderance of the evidence," for purposes of this investigation, means that the evidence on one side outweighs, or is more than, the evidence on the other side.

### **IV. FACTUAL FINDINGS**

#### **1) Circumstances Related To The Flag Being Raised On the Courtyard Flagpole**

After a thorough review of the evidence, the investigator found by a preponderance of the evidence that students raised the Palestinian flag on the School's courtyard flagpole as part of a student-led Walkout event on October 18, 2023 (the Walkout). The investigator found the Palestinian flag remained raised on the courtyard flagpole from October 18, 2023 until the Head



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Custodian removed it on November 15, 2023. The investigator further found the School Principal was aware of and had the authority to remove the Palestinian flag from the courtyard flagpole. However, the investigator found the School Principal did not fail to remove the flag prior to November 15, 2023, for any improper purpose. The investigator made these findings for the following reasons.

First, the evidence demonstrates that students raised the Palestinian flag on the courtyard flagpole during the Walkout on October 18, 2023. Documentary evidence confirmed there was a student-led Walkout on October 18, 2023 regarding the Israel-Palestine Conflict. While two witnesses interviewed in this investigation did not see the students raise the Palestinian flag, the witnesses credibly recalled that they either noticed the flag after the Walkout or heard from others that the flag was raised at the Walkout. An additional witness, a school teacher, was not certain whether the flag was raised at the Walkout or another student-led rally around the same time, however the witness confirmed they saw the Palestinian flag on the courtyard flagpole in approximately late October 2023 after both events.

In addition, three witnesses corroborated the October 18, 2023 Walkout was led by students. Further, student inquiries to the School Principal and a teacher about the Palestinian flag after it was removed corroborated students had an interest in the Palestinian flag on the courtyard flagpole. Thus, based on the available evidence, the investigator found students raised the Palestinian flag on the courtyard flagpole.

Second, documentary evidence corroborated the flag was removed from the courtyard flagpole on November 15, 2023. Three witnesses also recalled the flag was taken down on November 15, 2023. The investigator noted one witness did not believe the flag was flying for the length of time from the Walkout on October 18, 2023 to November 15, 2023, as they believed “someone would have noticed it” flying. However, the witnesses each stated they did not believe the flag was lowered and raised each day. Therefore, the investigator found it plausible, and supported by a preponderance of the evidence, that the Palestinian flag was raised on the courtyard flagpole from October 18, 2023 through November 15, 2023.

Third, the School Principal acknowledged she was aware of the Palestinian flag’s presence on the courtyard flagpole before it was removed and that she likely had the authority to remove the flag. However, the School Principal credibly stated she did not have concerns about the Palestinian flag being raised on the courtyard flagpole prior to November 15, 2023. The School Principal did not receive any complaints about the Palestinian flag from students, staff, or parents until that date. In addition, the School Principal noted, and three witnesses corroborated, there had been a variety of flags raised on the same flagpole, including most recently the Transgender



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Pride flag. Notably, witnesses also recalled flags representing Latin American countries and Yemen were raised on the courtyard flagpole. Due to the variety of flags flown on the same flagpole, the investigator found it plausible the School Principal would not have concerns about the Palestinian flag being raised on the courtyard flagpole.

### **2) Circumstances Related To The Deletion Of Video Surveillance Of The Palestinian Flag Being Raised On The Courtyard Flagpole**

After a thorough review of the evidence, the investigator found by a preponderance of the evidence that the video recording of the Palestinian flag being raised on the courtyard flagpole was deleted in accordance with the District’s video surveillance storage and deletion practices. The investigator made this finding for the following reasons.

First, the School Principal credibly explained she had access to the School’s surveillance video recordings and that she looked for video of the Palestinian flag being raised, only to find it was deleted as a result of the computer server recording over videos after 30 days. The School Principal’s account that the video footage was deleted and recorded over was corroborated by an additional witness, a District Law Clerk. The Law Clerk confirmed their understanding—that the video footage “loops” and records over prior videos—in correspondence, dated December 1, 2023 letter to you. Thus, the investigator found the video footage of the Palestinian flag being raised on the courtyard flagpole was not available on November 27, 2023, when the School Principal attempted to find it, due to the manner in which the School’s server stores and maintains video recordings.

Second, the District made reasonable efforts to obtain the video after you submitted your CPRA request. While approximately three business days passed between your request and the School Principal’s search for the video, the District made reasonable efforts to locate the video recording. Notably, you submitted your CPRA request outside of normal business hours on Saturday, November 18, 2023. The Law Clerk did not receive the information until the Tuesday before the Thanksgiving holiday. The Law Clerk credibly explained they needed to meet with the District’s General Counsel before processing the CPRA request, and they contacted the High School Network Superintendent on the same day as their meeting with General Counsel. The investigator did not identify any evidence that the District deliberately deleted the video or caused an unreasonable delay in attempting to locate the video. Arguably, because the server deletes surveillance videos after only 30 days, the video would have already been deleted before the District even received your CPRA request.



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### V. CONCLUSIONS OF LAW, DISPOSITION AND RATIONALE FOR DISPOSITION

Applying the factual findings above, the investigator found the School did not violate the District policy pertaining to controversial issues.

While the investigator found students raised the Palestinian flag on the courtyard flagpole from October 18, 2023 until November 15, 2023, the investigator found the flag being raised did not violate the District's Controversial Issues policies. The evidence demonstrates the students' decision to raise the Palestinian flag on the courtyard flagpole was not a topic of classroom discussion. Nonetheless, the investigator did not identify any evidence, in either available witness statements or emails, to suggest there was discussion about raising the Palestinian flag in the classroom, as part of formal learning activities. The investigator further did not identify evidence that raising the Palestinian flag was a result of any teacher using their position to forward their own political, economic, or social bias. Rather, the raising of the Palestinian flag on the courtyard flagpole was an activity planned by students, outside of their classes.

The investigator also did not identify any policies pertaining to retention and deletion of campus video surveillance and therefore find the deletion of the video of the Palestinian flag being raised on October 18, 2023 did not violate District policy. The District confirmed they do not have policies or protocols specific to retention of campus surveillance video.

### VI. CORRECTIVE ACTIONS

Although the investigator found the School did not violate District policy, the District will provide training to district leaders regarding Federal law and State law requirements regarding the display of flags at schools.

### VII. APPEAL RIGHTS

#### UCP Level 2 Appeal

The District believes this investigation has satisfactorily resolved the issues raised in your complaint. As per Board Policy 1312.3: Uniform Complaint Procedures (UCP), if you are not satisfied with this Level 1 Complaint response, you have the right to file a Level 2 Appeal, with the Office of the Ombudsperson within (5) five calendar days of receiving this response.

#### Appeal Rights to California Department of Education



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If a complainant disagrees with the findings and conclusions presented by the District at the conclusion of the Level 2 Appeal, complainants have the right to appeal within thirty (30) days of the receipt of the District's Level 2 Appeal response letter. Such an appeal should specify the reasons for appealing the decision and whether the facts are incorrect and/or the law has been misapplied. A copy of the original complaint and a copy of this report should be included. Send your appeal to:

California Department of Education  
1430 N Street  
Sacramento, CA 95214-5901

### **VIII. CIVIL LAW REMEDIES**

A complainant may pursue civil law remedies outside of the District's complaint procedures. Complainants may seek assistance from mediation centers or public/private interest attorneys. Civil law remedies that may be imposed by court include, but are not limited to, injunctions and restraining orders. For discrimination complaints, however, a complainant must wait until 60 days have elapsed from filing an appeal with the CDE before pursuing civil law remedies. The moratorium does not apply to injunctive relief and is applicable only if the district has appropriately, and in a timely manner, apprised the complainant of his/her right to file a complaint in accordance with 5 CCR 4622.

The Governing Board prohibits any form of retaliation against any complainant in the complaint process. Participation in the complaint process shall not in any way affect the status, grades, or work assignments of the complainant.

Thank you for bringing your concerns to our attention. If you have any questions, please feel free to contact me at the following telephone (510) 879-3667 or via email: [gabriel.valenzuela@ousd.org](mailto:gabriel.valenzuela@ousd.org)

Respectfully,

*Gabriel Valenzuela*

Gabriel Valenzuela  
Ombudsperson



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cc: Tara Gard, Chief of Talent, Talent Division  
Jenine Lindsey, General Counsel, Office of the General Counsel  
Sondra Aguilera, Chief Academic Officer  
Vanessa Sifuentes, High School Network Superintendent  
Nidya Baez, Principal, Fremont High School  
Angela Badami-Knight, Talent Partner, Talent Division