COLUMBIA LAW REVIEW FORUM

VOL. 126 JANUARY 30, 2026 PAGES 1–54

CAMPUS CRISES AND THE LIMITS OF TITLE VI

Suzanne B. Goldberg & Olatunde C.A. Johnson***

This Piece examines the deployment of Title VI of the Civil Rights Act of 1964 as a mechanism for regulating campus conflict following the 2023 to 2024 campus protests and seeks to reset the discourse in light of the statute's history, doctrine, and role in higher education. Title VI is an important tool for addressing identity-based harassment, epithets, and violence between students, but it is neither designed nor effective as a tool for negotiating clashes between universities' cornerstone commitments to robust debate and an optimal learning environment for all students. In converting the statute from a source of protection against discrimination based on race, color, and national origin, including shared ancestry, to a punitive instrument for disciplining and controlling campuses around the country, the current Administration is unprecedented in its use of Title VI, which is not only ahistorical and in defiance of the statute's terms but also unworkable under hostile environment doctrine. For universities tempted to turn to Title VI for managing campus conflicts, this Piece shows that Title VI's compliance regime is ill-suited for producing flourishing and sustainable campus environments for several reasons, including the First Amendment limits on universities' ability to restrict harmful speech. Against this backdrop, the Piece argues that schools have a responsibility to carry out Title VI compliance within broader efforts to build community citizenship, including conflict de-escalation and informal conflict-resolution processes. In short, the inclusionary aims of Title VI will be achieved best not by enforcement alone but as part of a broader commitment to a thriving campus.

* Herbert and Doris Wechsler Clinical Professor of Law, Columbia Law School. I draw on prior experience as Deputy Assistant Secretary in the U.S. Department of Education's Office for Civil Rights (2021–2023) and executive vice president of Columbia University (2015–2021), but this Piece expresses my views in my personal capacity only.

** Ruth Bader Ginsburg '59 Professor of Law, Columbia Law School.

The authors thank Vicki Jackson, Martha Minow, David Pozen, David Cole, Nick Lemann, and participants in the Columbia Law School faculty workshop, and James Morrison for excellent research assistance.

INTRODUCTION

There can be no question that a crisis erupted for many colleges and universities after October 7, 2023, as large, sustained campus protests took hold on a scale not seen since the Vietnam War demonstrations more than a half-century earlier.[1] These protests also sparked real questions about the role of Title VI of the Civil Rights Act of 1964 as a mechanism for governmental discipline of higher education institutions and institutional boundary setting going forward.[2] This Piece seeks to reset the discourse

---

1. The protests began on some campuses almost immediately after Hamas attacked Israel on October 7, 2023, and escalated in size and to more campuses following Israel's counterattack on Gaza. See Anna Betts, A Timeline of How the Israel-Hamas War Has Roiled College Campuses, N.Y. Times (Dec. 12, 2023), https://www.nytimes.com/2023/12/12/us/campus-unrest-israel-gaza-antisemitism.html (on file with the *Columbia Law Review*); A Look at the Protests of the War in Gaza that Have Emerged at US Colleges, AP News, https://apnews.com/article/gaza-war-campus-protests-966eb531279f8e4381883fc5d79d5466 [https://perma.cc/57XZ-B57V] (last updated Apr. 30, 2024) [hereinafter A Look at the Protests]. On the comparison to Vietnam, see Edward Helmore, Echoes of Vietnam Era as Pro-Palestinian Student Protests Roil US Campuses, The Guardian (Apr. 28, 2024), https://www.theguardian.com/world/2024/apr/28/us-student-protests-gaza-israel [https://perma.cc/3PTW-92U9]; cf. Andrea Shalal & Bianca Flowers, Explainer: How US Campus Protests Over Gaza Differ From Vietnam War Era, Reuters (May 4, 2024), https://www.reuters.com/world/us/how-us-campus-protests-over-gaza-differ-vietnam-war-era-2024-05-04 [https://perma.cc/U6BH-KL9N] (arguing that the post–October 7 protests differ from the Vietnam War–era protests "in both scale and motivation").

2. See 42 U.S.C. § 2000d (2018) ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving

around Title VI in light of the statute's history, doctrine, and role in higher education. In doing so, the discussion focuses especially on the recurring potential for student conflicts involving First Amendment–protected speech related to race and national origin, including shared ancestry, as schools carry out their dual commitments to robust debate and a thriving, pluralist student body.[3]

Title VI came into the higher education spotlight, after a long period of relative inattention, as a legal stick to press schools on alleged violations of students' right to an education free from discrimination as a result of post–October 7, 2023, encampments, library sit-ins, traditional protests, and other campus clashes.[4] The claim was, in essence, that the statute, which prohibits discrimination based on race, color, and national origin in federally funded programs, required more from higher education institutions in response to allegations of antisemitism and anti-Muslim bias on campus.[5]

Reaching these types of harms through Title VI was not a legal innovation as a general matter because Title VI has long been interpreted

---

Federal financial assistance."). Title VI prohibits covered discrimination in any program or activity that receives federal financial assistance, which includes all colleges and universities that receive federal funding for research or enroll students who receive federal funding through work-study, grants, and low-interest student loans. Section V—Defining Title VI, DOJ, https://www.justice.gov/crt/fcs/T6manual5 [https://perma.cc/453F-C2RM] (last visited Oct. 26, 2025).

Federal agencies' insistence on multimillion-dollar payment obligations in enforcement-related negotiations also raises significant questions warranting further study. See, e.g., Michael C. Dorf, How Bad Is the Columbia Settlement Agreement?, Dorf on L. (July 24, 2025), https://www.dorfonlaw.org/2025/07/how-bad-is-columbia-settlement-agreement.html [https://perma.cc/SA88-5ZDU] (questioning the government's source of authority for including in its agreement with Columbia University an obligation that the University pay over $200 million to the federal government).

3. This Piece refers interchangeably to colleges and universities, higher education institutions, and schools. Nearly all colleges and universities in the United States receive federal financial assistance and are therefore covered by Title VI. See infra note 183.

4. See, e.g., Timothy Pratt, Revealed: Emory University Investigated Over Alleged Anti-Muslim Discrimination, The Guardian (May 2, 2024), https://www.theguardian.com/us-news/2024/may/02/emory-university-atlanta-investigation-alleged-anti-muslim-discrimination [https://perma.cc/H94S-6YEB] (reporting on "at least six title VI claims made in recent weeks regarding discriminatory treatment of Palestinian, Muslim and Arab students on US campuses"); Our Cases, Brandeis Ctr., https://brandeiscenter.com/cases/ [https://perma.cc/5DK6-WRP2] (last visited Sep. 12, 2025) (listing numerous lawsuits and complaints to the Department of Education's Office for Civil Rights (OCR) filed on behalf of Jewish students against colleges and universities, school districts, and other entities); Press Release, U.S. Dep't of Educ., U.S. Department of Education's Office for Civil Rights Sends Letters to 60 Universities Under Investigation for Antisemitic Discrimination and Harassment (Mar. 10, 2025), https://www.ed.gov/about/news/press-release/us-department-of-educations-office-civil-rights-sends-letters-60-universities-under-investigation-antisemitic-discrimination-and-harassment [https://perma.cc/82SZ-QHNT] (describing letters sent to fifty-five universities "under investigation or monitoring in response to [Title VI] complaints filed with OCR" related to antisemitism and five additional universities under OCR-initiated investigations).

On pre–October 7, 2023, Title VI implementation and enforcement, see infra Parts I–II.

5. See supra note 4.

to cover discrimination based on "shared ancestry,"[6] including against students who are "Jewish, Israeli, Muslim, Arab, Sikh, South Asian, Hindu, Palestinian, or any other faith or ancestry."[7] But deploying Title VI's hostile environment doctrine against colleges' and universities' responses to large-scale protests rather than individualized discrimination claims was new.[8]

This use of Title VI magnified two aspects of a long-simmering tension between nondiscrimination and free expression in the ideological rough-and-tumble of a campus learning environment. First, higher education institutions depend on vigorous contestation of ideas to fulfill their academic mission. First Amendment doctrine reinforces this point through special protections for speech at public colleges and universities, and many private institutions have committed themselves to comparable protections for speech on their campuses.[9] Second, a robust learning

---

6. See Benjamin Eidelson & Deborah Hellman, Antisemitism, Anti-Zionism, and Title VI: A Guide for the Perplexed, 139 Harv. L. Rev. Forum 1, 5 (2025), https://harvardlawreview.org/forum/vol-139/antisemitism-anti-zionism-and-title-vi-a-guide-for-the-perplexed/ [https://perma.cc/8MHZ-P9YW] (emphasis omitted) (internal quotation marks omitted) (quoting Catherine E. Lhamon, Assistant Sec'y for C.R., U.S. Dep't of Educ., Dear Colleague Letter: Title VI and Shared Ancestry or Ethnic Characteristics Discrimination 1 (May 7, 2024), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf [https://perma.cc/KM8P-TBBC]) (describing how Title VI covers discrimination against Jewish people based on shared ancestry); Russlynn Ali, Assistant Sec'y for C.R., U.S. Dep't of Educ., Dear Colleague Letter: Harassment and Bullying 4–6 (Oct. 26, 2010), https://www.govinfo.gov/content/pkg/GOVPUB-ED-PURL-gpo190958/pdf/GOVPUB-ED-PURL-gpo190958.pdf [https://perma.cc/DVN8-VM5Q] [hereinafter 2010 Guidance] (describing examples of discrimination based on shared ancestry against Jewish, Muslim, and Sikh students).

7. Catherine E. Lhamon, Assistant Sec'y for C.R., U.S. Dep't of Educ., Dear Colleague Letter: Title VI and Shared Ancestry or Ethnic Characteristics Discrimination 1 (May 7, 2024), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf [https://perma.cc/KM8P-TBBC] [hereinafter 2024 Guidance].

8. A fact sheet on Title VI and religion published by the U.S. Department of Education's OCR in 2017 linked to several other OCR documents that it described as providing "illustrative examples of discrimination, including harassment." Off. for C.R., U.S. Dep't of Educ., Know Your Rights: Title VI and Religion (2017), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf [https://perma.cc/U9C3-UCWE]. None of these included anything comparable to the Israel–Gaza-related protests on campuses. See, e.g., Off. for C.R., U.S. Dep't of Educ., Combating Discrimination Against AANHPI and MASSA Students (2016), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/aanhpi-massa-factsheet-201606.pdf [https://perma.cc/8DBC-PN98] (describing examples of harassment based on language differences, name-calling, stereotypes, and failure to provide accommodations); Off. for C.R., U.S. Dep't of Educ., Combating Discrimination Against Jewish Students (2017), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/jewish-factsheet-201701.pdf [https://perma.cc/AM34-V372] (same). By contrast, a 2024 Dear Colleague Letter included several examples of Title VI's application in the context of campus protests. 2024 Guidance, supra note 7, at 6–14.

9. See, e.g., Healy v. James, 408 U.S. 169, 180, 191 (1972) (rejecting a restriction on a campus organization based on an "undifferentiated fear or apprehension of disturbance [which] is not enough to overcome the right to freedom of expression," and adding that "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools" (alterations in original) (internal quotation marks omitted)

environment also depends on students (as well as faculty and staff) being able to navigate profound differences in backgrounds, beliefs, and other important aspects of identity while participating in classes and campus life. Taken together, especially in high-intensity debates on sensitive issues, the result is that one student's protected expression may be experienced by another student as offensive and even threatening in ways that interfere with that student's participation.[10]

These types of clashes, which open up learning for some while shutting it down for others, are "baked in" to any higher education setting that supports the exchange of ideas among a pluralist student body. And the claim that Title VI is a fix for these clashes is not only ahistorical and lawless as applied by the Trump Administration but also unworkable doctrinally and undermining of higher education.[11] Even apart from free speech concerns, many harms students experience during or after these clashes—including declines in participation, grades, and well-being—do not necessarily meet the very high bar set by Title VI hostile environment doctrine, which establishes that discrimination must be severe, pervasive, and objectively offensive in a way that deprives the student of access to the school's educational opportunities.[12] Even further, institutions will be held liable under Title VI only if they have been deliberately indifferent to that discrimination.[13]

(first quoting Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 508 (1969); then quoting Shelton v. Tucker, 364 U.S. 479, 487 (1960))); Gartenberg v. Cooper Union for the Advancement of Sci. & Art, 765 F. Supp. 3d 245, 261 (S.D.N.Y. 2025) (stating that "punish[ing] political speech to avoid liability for a hostile environment would burden not only their students' freedom of expression, but the academic freedom of the institution itself to create an educational environment centered around the free exchange of ideas"). Although private colleges and universities are not obligated to protect student speech by the First Amendment, many have committed themselves to free speech principles. See Chicago Statement: University and Faculty Body Support, Found. for Individual Rts. & Expression, https://www.thefire.org/research-learn/chicago-statement-university-and-faculty-body-support [https://perma.cc/4WKJ-B6TH] (last visited Oct. 3, 2025) (listing schools that have adopted the Chicago Statement or similar free speech protections); The Law & Campus Free Speech, PEN Am., https://pen.org/campus-free-speech/the-law/ [https://perma.cc/8L68-WKCQ] (last visited Jan. 7, 2026) ("[M]ost [private universities] adhere to free speech principles similar to those mandated by the First Amendment because free speech is inherent to their mission.").

10. Cf. Suzanne B. Goldberg, Free Expression on Campus: Mitigating the Costs of Contentious Speakers, 41 Harv. J.L. & Pub. Pol'y 163, 178–83 (2018) (describing students' varying reactions to controversial campus speakers). Professor Susan Sturm has helpfully developed the idea of full participation in the workplace context to consider whether individuals "have the opportunity to thrive, succeed, and advance." Susan Sturm, The Architecture of Inclusion: Advancing Workplace Equity in Higher Education, 29 Harv. J.L. & Gender 247, 251 (2006).

11. See infra Parts I–II.

12. See infra Parts I–II. The Department of Education's Office for Civil Rights has traditionally applied a "severe or pervasive" standard in the context of administrative enforcement. See infra notes 59–60.

13. Administrative enforcement does not necessarily require a showing of deliberate indifference. For discussion of this standard and its application in administrative and private enforcement contexts, see infra Part I.

The upshot is while Title VI remains relevant to managing campus challenges of the sort presented by post–October 7, 2023, protests or other concerns about antisemitism or anti-Muslim hostility on campuses, it will not ensure an optimal, or even adequate, learning environment for all students. Leading with Title VI in these efforts is thus to err as a matter of law and educational strategy.[14] In contrast, an approach to Title VI that focuses on citizenship in the campus community—accounting for the respective roles and capacities of government and schools to support free inquiry and a robust nondiscriminatory learning environment for all students—can yield strategies and regulations that work with, rather than against, the tensions inherent in these specialized settings.

To put recent use and discussions of Title VI in perspective, it is important to remember that, prior to October 7, 2023, colleges and universities devoted relatively few resources and little attention to the statute's implementation in response to hostile speech related to students' race, color, or national origin.[15] During this time and for many years prior, schools had dedicated substantial resources to implementing their obligations under federal disability law and Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally funded educational programs and activities.[16] Scholars, too,

---

14. See infra Parts I–II.

15. See infra Part I.

16. See, e.g., Johanna Alonso, Now Hiring: Title VI Coordinators, Inside Higher Ed (July 14, 2025), https://www.insidehighered.com/news/students/diversity/2025/07/14/colleges-hire-title-vi-coordinators-amid-federal-scrutiny [https://perma.cc/PU7D-XCGC] [hereinafter Alonso, Now Hiring] (observing that coordinator positions for Title VI, unlike Title IX, "were virtually nonexistent" on campuses prior to 2024 and that "colleges have underinvested in Title VI[,] [i]n contrast with Title IX" in light of the absence of Title VI regulations from the Department of Education); Anemona Hartocollis, Colleges Spending Millions to Deal With Sexual Misconduct Complaints, N.Y. Times (Mar. 29, 2016), https://www.nytimes.com/2016/03/30/us/colleges-beef-up-bureaucracies-to-deal-with-sexual-misconduct.html (on file with the *Columbia Law Review*) (describing resources devoted by higher education institutions to Title IX compliance); Alan Levinovitz, Are Colleges Getting Disability Accommodations All Wrong?, Chron. Higher Educ. (Sep. 25, 2024), https://www.chronicle.com/article/do-colleges-provide-too-many-disability-accommodations (on file with the *Columbia Law Review*) (discussing resources for disability accommodations at multiple institutions).

This relative inattention to Title VI is "not necessarily surprising" in light of the relatively small number of Title VI hostile environment complaints against colleges and universities made to OCR prior to October 7, 2023, and the absence of Title VI regulations from the Department of Education. Alonso, Now Hiring, supra. The Department has long had regulations in place under Title IX and section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (2018), which covers students with disabilities. See id.

Still, to assume that Title VI is the twin of Title IX for purposes of a federal civil rights response to a campus crisis is to miss that the Title IX protests roiling campuses in the mid-2010s criticized colleges and universities for responding inadequately to allegations of sexual assault and other sexual misconduct by students and employees, rather than to the politics and conduct of violent attacks abroad. See Anemona Hartocollis, New Wave of Student Activism Presses Colleges on Sexual Assault, N.Y. Times (June 8, 2019),

have devoted substantial attention to enforcement of Title IX on college campuses.[17]

Still, we disregard Title VI's pre–October 7, 2023, history at our peril. Although Title VI has often been labeled a "sleeping giant," it might well be the most powerful civil rights statute we have.[18] With that in mind, Part I provides a brief but essential orientation to Title VI, including the introduction of hostile environment doctrine in the 1990s and a review of the longstanding statutory and regulatory enforcement procedures. It is these procedures that Trump Administration officials have so plainly disregarded while converting Title VI from protective to punitive, right before our eyes.[19]

---

https://www.nytimes.com/2019/06/08/us/college-protests-dobetter.html (on file with the *Columbia Law Review*).

17. Even a cursory Westlaw search shows just over one hundred law review and journal articles with Title VI in their title, including work by one of this Piece's authors, as compared to nearly one thousand with Title IX. Compare Westlaw, + "advanced: TI("Title VI")", 133 results (Sep. 6, 2025) (on file with the *Columbia Law Review*) (filtered by "Law Reviews & Journals"), with Westlaw, +"advanced: TI("Title IX")", 942 results (Sep. 6, 2025) (on file with the *Columbia Law Review*) (filtered by "Law Reviews & Journals").

18. Olatunde C.A. Johnson, Lawyering that Has No Name: Title VI and the Meaning of Private Enforcement, 66 Stan. L. Rev. 1293, 1294 (2014) [hereinafter Johnson, Lawyering that Has No Name] (internal quotation marks omitted).

19. During the writing of this Piece, the Trump Administration shifted in some instances from focusing expressly on enforcing Title VI to promoting agreements with universities that contain no reference to concerns about specific Title VI allegations or violations. See, e.g., Letter from Josh Gruenbaum, Comm'r of the Fed. Acquisition Serv., Gen. Servs. Admin., Sean R. Keveney, Acting Gen. Couns., HHS & Thomas E. Wheeler, Acting Gen. Couns., U.S. Dep't of Educ., to Alan M. Garber, President, Harvard Univ. & Penny Pritzker, Lead Member, Harvard Corp. (Apr. 11, 2025), https://s3.documentcloud.org/documents/25896885/letter-to-harvard.pdf [https://perma.cc/KU4Z-4WFP] [hereinafter Harvard Letter]. The Administration also made efforts to further its control over colleges and universities by inviting some institutions to agree to a compact that included favorable terms related to funding access, government contracts, student loans and visas, and tax treatment in exchange for adherence to a varied set of restrictions related to admissions, student learning, use of specific definitions of male and female, and more. See, e.g., U.S. Dep't of Educ., Compact for Academic Excellence in Higher Education (2025), https://www.washingtonexaminer.com/wp-content/uploads/2025/10/Compact-for-Academic-Excellence-in-Higher-Education-10.1.pdf [https://perma.cc/269U-5M7B]. Several institutions on the initial invitation list declined the Administration's proposal. See, e.g., Stephanie Saul & Alan Blinder, Penn and U.S.C. Become Latest Universities to Reject White House Deal, N.Y. Times (Oct. 16, 2025), https://www.nytimes.com/2025/10/16/us/university-of-pennsylvania-rejects-white-house-deal.html (on file with the *Columbia Law Review*). For a legal analysis of the compact, see Amanda Shanor & Serena Mayeri, A Brief Legal Analysis of the Department of Education's Proposed Compact for Higher Education, Knight Inst.: Blog (Oct. 15, 2025), https://knightcolumbia.org/blog/a-brief-legal-analysis-of-the-department-of-educations-proposed-compact-for-higher-education [https://perma.cc/6F5Z-3NSN]. This Piece does not address the choice of Columbia University or any other institution to enter an agreement with the Trump Administration related to Title VI. See, e.g., Our Resolution With the Federal Government, Colum. U.: Off. President, https://president.columbia.edu/content/our-resolution-federal-government (on file with the *Columbia Law Review*) (last visited Oct. 5, 2025). This Piece raises concerns below,

Part II turns to the challenge of trying to manage campus protests through the antidiscrimination mechanism of Title VI, mapping the longstanding clashes between First Amendment doctrine and the legal obligation to prohibit harassment that involves speech. Part II provides a path forward that protects political and academic speech on campuses while also protecting students from severe and pervasive harassment. This Piece argues, however, that because harmful speech will likely persist consistent with the First Amendment, Title VI's compliance regime is ill-suited for producing flourishing and sustainable campus environments.

Part III relocates Title VI compliance efforts within a community–citizenship framework and a broader set of regulatory and self-governance recommendations. Through this lens, the statute returns to its appropriate and necessary role of setting outer disciplinary limits and stimulating a multifaceted approach to address the harms of hostile speech[20] while guarding against executive branch takeover of higher education institutions.

* * *

In this effort, this Piece takes as foundational that many students experienced the post–October 7, 2023, protests or their institutions' reactions to the protests as profoundly harmful and disruptive, both personally and educationally.[21] This includes Jewish students who

---

however, about the government's reliance on Title VI to press for agreements far beyond the statute's scope. See infra sections I.B–.C. For commentary on potential concerns with such agreements, see, e.g., David Pozen, Regulation by Deal Comes to Higher Ed, Balkinization (July 23, 2025), https://balkin.blogspot.com/2025/07/regulation-by-deal-comes-to-higher-ed.html [https://perma.cc/4B73-9R96].

20. Cf. Olatunde C.A. Johnson, Stimulus and Civil Rights, 111 Colum. L. Rev. 154, 187–204 (2011) (discussing mechanisms for stimulating racial inclusion and equality through program design in addition to court-based law enforcement).

21. These experiences have been reported extensively in media, litigation, and reports from institutions and advocacy organizations, among others. See, e.g., A Look at the Protests, supra note 1 (describing protests on a variety of campuses); Elle Reeve, Protest, Fear and Pride: US College Students Reflect on How They're Impacted by Israel-Hamas War, CNN (Nov. 4, 2023), https://www.cnn.com/2023/11/04/us/us-students-impacted-by-israel-hamas-war [https://perma.cc/H69A-EAZ6] (providing in-depth reactions from individual students); see also Changes in Religious Discrimination After 10/7/2023 for Students Seeking College Counseling Services, Penn St. Student Affs.: Ctr. for Collegiate Mental Health (Oct. 28, 2024), https://ccmh.psu.edu/index.php?category=new-findings&id=55%3Achanges-in-religious-discrimination-after-10-7-2023-for-students-seeking-college-counseling-services&option=com_dailyplanetblog&view=entry [https://perma.cc/NH54-MC4V] [hereinafter Counseling Services] (analyzing data on self-reported religious discrimination from students of many faiths who received mental health treatment at ninety-six college counseling centers from 2021 to 2024).

For a large-scale, multicampus, nonpartisan report, see, e.g., Robert A. Pape, Chi. Project on Sec. & Threats, Understanding Campus Fears After October 7 and How to Reduce Them (2024), https://d3qi0qp55mx5f5.cloudfront.net/cpost/i/docs/CPOST_Understanding_Campus_Fears_-_Report_incl_Supplement_v3.pdf?mtime=1713215401 [https://perma.cc/5ET2-U2NG].

expressed fear and concern for their personal safety and well-being related to antisemitism, including antisemitic harassment on and near their campuses, and Arab, Muslim, and Palestinian students who likewise reported personal-safety fears and concerns related to anti-Muslim bias and harassment on and near their campuses.[22] Significant numbers of

---

For reports by schools and campus governance organizations see, e.g., Harvard Univ., Final Report: Presidential Task Force on Combating Anti-Muslim, Anti-Arab, and Anti-Palestinian Bias (2025), https://www.harvard.edu/wp-content/uploads/2025/04/FINAL-Harvard-AMAAAPB-Report-4.29.25.pdf [https://perma.cc/M56K-CC9M]; Harvard Univ., Final Report: Presidential Task Force on Combating Antisemitism and Anti-Israeli Bias (2025), https://www.harvard.edu/wp-content/uploads/2025/04/FINAL-Harvard-ASAIB-Report-4.29.25.pdf [https://perma.cc/8KSP-FUEN]; NORC, Columbia University Student Belonging and Exclusion Survey Report (2025), https://www.columbia.edu/content/sites/default/files/content/Documents/Columbia-Student-Survey-Report-June-2025.pdf [https://perma.cc/TCQ9-9722]; Subcomm. on Antisemitism and Anti-Israeli Bias, Stanford Univ., "It's in the Air": Antisemitism and Anti-Israeli Bias at Stanford, and How to Address It (2024), https://news.stanford.edu/__data/assets/pdf_file/0033/156588/ASAIB-final-report.pdf [https://perma.cc/Y4BT-22AP]; Task Force on Antisemitism, Columbia Univ., Report #2: Columbia University Student Experiences of Antisemitism and Recommendations for Promoting Shared Values and Inclusion (2024), https://www.columbia.edu/content/sites/default/files/content/about/Task%20Force%20on%20Antisemitism/Report-2-Task-Force-on-Antisemitism.pdf [https://perma.cc/33E2-FCUY]; Univ. of Wash., Climate Assessment and Reports From the Antisemitism and Islamophobia Task Forces (2024), https://uw-s3-cdn.s3.us-west-2.amazonaws.com/wp-content/uploads/sites/234/2024/10/15140059/Climate-Assessment-and-Reports-from-the-Antisemitism-and-Islamophobia-Task-Forces-at-the-University-of-Washington.pdf [https://perma.cc/KY5C-HMCF].

For reports from advocacy organizations, see, e.g., Council on Am.–Islamic Rels. Cal. & Ctr. for the Prevention of Hate & Bullying, 2024 Campus Climate Report: Examining Islamophobia on California College Campuses (2024), https://ca.cair.com/wp-content/uploads/2025/01/WEB_2024-Campus-Climate-Report-.pdf [https://perma.cc/832X-RWL9]; Nearly Three-Quarters of Jewish Students Experienced or Witnessed Antisemitism on Campus, New Survey Finds, Hillel Int'l (Nov. 29, 2023), https://www.hillel.org/nearly-three-quarters-of-jewish-students-experienced-or-witnessed-antisemitism-on-campus-new-survey-finds/ [https://perma.cc/Q7AQ-MN23].

Allegations in litigation also have described students' experiences and how those experiences interfered with their education. See, e.g., Kiara Alfonseca, DOE Launches Investigation Into Harvard Following Islamophobia, Anti-Arab Complaint, ABC News (Feb. 6, 2024), https://abcnews.go.com/US/doe-launches-investigation-harvard-islamophobia-anti-arab-complaint/story?id=106998802 [https://perma.cc/T6EC-CY6M]; Jonathan Stempel, Harvard Is Sued by Jewish Students Over 'Rampant' Antisemitism on Campus, Reuters (Jan. 11, 2024), https://www.reuters.com/legal/harvard-sued-by-jewish-students-over-antisemitism-campus-2024-01-11/ [https://perma.cc/NC8W-98CZ]; Press Release, Holtzman Vogel, Department of Education Opens Investigations Into Two Higher Education Institutions Following Holtzman Vogel Clients' Complaints About Antisemitism (Mar. 20, 2025), https://www.holtzmanvogel.com/news-insights/dep-opens-investigations-into-higher-education-institutions-following-complaints-about-antisemitism [https://perma.cc/BUB6-2QFZ]; Press Release, Muslim Advocs., Muslim Advocates, CUNY Students File Federal Civil Rights Complaint About Anti-Palestinian Racism (Apr. 16, 2024), https://muslimadvocates.org/2024/04/muslim-advocates-cuny-students-file-federal-civil-rights-complaint-about-anti-palestinian-racism [https://perma.cc/PVY3-6NKR].

22. Pape, supra note 21, at iii–iv.

other students also reported being negatively affected, including those who were not involved in protests but felt "caught in the crossfire."[23]

This was not mere upset during a difficult period on campus. Many students reported that their schools were not adequately protecting their safety, including thousands of students who responded to two nonpartisan surveys on hundreds of campuses in late 2023 and early 2024.[24] Of these, over half of Jewish and Muslim students reported feeling "in personal danger" in relation to their views on the Israel–Gaza conflict, as did roughly sixteen percent of other students.[25] This did not necessarily mean students were at risk of imminent physical harm but did encompass fears for physical safety as well as concerns about "academic discrimination, current or future economic livelihood, and social isolation."[26] A report on the data stressed that the impact of these fears "in an academic environment devoted to scholarship and learning[] should not be underestimated."[27]

Further analyses showed that students' senses of fear and intimidation on many campuses[28] arose from a range of experiences and observations, including direct threats; verbal abuse; subjection to physical violence;[29]

---

23. Id.

24. Id. at ii.

25. Id. For reporting on this study, see, e.g., Sara Weissman, Jewish, Muslim Students Fear Their Views Put Them in Danger, Inside Higher Ed (Mar. 8, 2024), https://www.insidehighered.com/news/students/diversity/2024/03/08/report-most-jewish-muslim-students-fearful-amid-conflict [https://perma.cc/27PH-B4XR]. For an additional large-scale study, see, e.g., Counseling Services, supra note 21.

26. Pape, supra note 21, at 5.

27. Id. at 5–6. Research in the wake of October 7, 2023, similarly showed how the campus climate negatively affected the educational experiences of Jewish, Arab, and Muslim students. See, e.g., Talia Morstead & Anita DeLongis, Antisemitism on Campus in the Wake of October 7: Examining Stress, Coping, and Depressive Symptoms Among Jewish Students, Stress & Health, Feb. 2025, at 1, 5 (describing how students who reported experiencing higher rates of antisemitism also reported "higher than usual levels of depressive symptoms"); Rania Awaad, The Devastating Mental Health Effects of Islamophobia, TIME (Nov. 16, 2023), https://time.com/6335453/islamophobia-mental-health-effects-essay/ [https://perma.cc/89B8-SJTD] (describing the targeting of Muslims after October 7, 2023, including on the author's university campus, and reviewing related mental health studies).

28. Campuses varied considerably in the number, type, and intensity of post–October 7, 2023, protests. For detailed analysis, see generally Bridging Divides Initiative, Princeton Univ., Issue Brief: Analysis of U.S. Campus Encampments Related to the Israel–Palestine Conflict (2024), https://bridgingdivides.princeton.edu/sites/g/files/toruqf6646/files/documents/BDI_Issue%20Brief_Campus%20Encampment%20Protests_May2024_Web.pdf [https://perma.cc/SG6A-8FTX]; Jay Ulfelder, Crowd Counting Consortium: An Empirical Overview of Recent Pro-Palestine Protests at U.S. Schools, Harv. Kennedy Sch.: Ash Ctr. for Democratic Governance & Innovation (May 30, 2024), https://ash.harvard.edu/articles/crowd-counting-blog-an-empirical-overview-of-recent-pro-palestine-protests-at-u-s-schools/ [https://perma.cc/Q3DQ-6CMG].

29. For examples of these types of incidents, see supra notes 22, 26, 28; see also, e.g., Rising Anti-Muslim and Anti-Arab Hate on Campus, PEN Am. (Nov. 10, 2023), https://pen.org/rising-anti-muslim-and-anti-arab-hate-on-campus [https://perma.cc/SR8M-TJRF].

vandalism of campus institutions;[30] interpretation of popular protest chants as calls for violence or discrimination against Jews or their loved ones in the United States or Israel;[31] and publication of protesters' personal views and information (i.e., doxxing),[32] resulting in physical threats, including arrests and threats of student visa revocation and deportation,[33] as well as the loss

---

It bears noting that the "vast majority" of demonstrations had no reports of physically violent or destructive activity. Bridging Divides Initiative, supra note 28, at 2, 7. Property damage, throwing projectiles, or other physical confrontations were reported in five percent (over sixty of almost 1,090 events) of encampment protests, approximately twenty-five of which involved physical confrontation related to law enforcement attempts to clear encampments and nearly forty of which involved engagement with counterprotesters. Id.

30. Pape, supra note 21, at 9–10; see also Marilyn Cooper, 'Hate Has No Place on Our Campuses', Liberal Educ., Winter 2024, https://www.aacu.org/liberaleducation/articles/hate-has-no-place-on-our-campuses [https://perma.cc/9ABW-NX46] (discussing reports from Hillel International and the Council on American–Islamic Relations). For scholarly commentary on specific incidents, see infra Part II.

31. Pape, supra note 21, at 7 ("Interpreting 'From the River to the Sea' to mean genocide of Jews corresponds strongly to feeling in personal danger due to support in the current Israel-Palestinian conflict."). The report also observes that the same phrase is understood in substantially different ways by Jewish and Muslim students: "While 26% of all students say they understand the phrase to mean 'expulsion or genocide of Israeli Jews,' 66% of Jewish students view the phrase that way, compared to only 14% of Muslim students." Id. For commentary addressing diverse interpretations of these phrases, see, e.g., Joe Hernandez, How Interpretations of the Phrase 'From the River to the Sea' Made It So Divisive, NPR (Nov. 9, 2023), https://www.npr.org/2023/11/09/1211671117/how-interpretations-of-the-phrase-from-the-river-to-the-sea-made-it-so-divisive [https://perma.cc/VJ7N-R76Q]; Laurie Kellman, 'From the River to the Sea': Why These 6 Words Spark Fury and Passion Over the Israel–Hamas War, AP News, https://apnews.com/article/river-sea-israel-gaza-hamas-protests-d7abbd756f481fe50b6fa5c0b907cd49 [https://perma.cc/PJ8L-89H9] (last updated Nov. 10, 2023).

32. See, e.g., Gabriella Borter, Joseph Ax & Andrew Hay, Name and Shame: Pro-Israel Website Ramps Up Attacks on Pro-Palestinian Student Protesters (May 11, 2024), https://www.reuters.com/world/name-shame-pro-israel-website-ramps-up-attacks-pro-palestinian-student-2024-05-11/ (on file with the *Columbia Law Review*) (describing doxxing and online targeting of students); Max J. Krupnick, Two Years of Doxxing at Harvard, Harv. Mag. (Aug. 8, 2025), https://www.harvardmagazine.com/university-news/harvard-doxxing-free-speech [https://perma.cc/ZQL4-XD8S] (reviewing the occurrence and consequences of the public exposure of students following October 7, 2023, and providing broader historical context for doxxing and similar tactics to identify and penalize individuals for their presumed or expressed views); J. Sellers Hill & Nia L. Orakwue, As Students Face Retaliation for Israel Statement, a 'Doxxing Truck' Displaying Students' Faces Comes to Harvard's Campus, Harv. Crimson (Oct. 12, 2023), https://www.thecrimson.com/article/2023/10/12/doxxing-truck-students-israel-statement/ [https://perma.cc/55BA-XKDT] (last updated Oct. 13, 2023) (describing doxxing trucks in Cambridge "digitally displaying the names and faces of students allegedly affiliated with student groups that signed onto a controversial statement on Hamas' attack on Israel").

33. See, e.g., Nadine El-Bawab, DHS Investigated Over 5,000 Student Protesters Listed on Doxxing Website: Official, ABC News (July 9, 2025), https://abcnews.go.com/US/dhs-investigated-5000-student-protesters-listed-doxxing-website/story?id=123619284 [https://perma.cc/ZPH8-RFRJ] (describing how "the Department of Homeland Security created a team that was instructed to look into more than 5,000 people who were named on a doxxing website that lists purported critics of Israel on U.S. college campuses"); Cristian Farias, A Federal Trial Reveals the Sprawling Plan Behind Trump's Attacks on Pro-

of professional opportunities.[34] Other students have described ongoing negative effects from the deterioration of campus climates after October 7, 2023, including in their classrooms and—particularly for students of color—in relation to immigration enforcement actions by the federal government.[35]

Students were not alone in their experiences of discontent and outrage at their institutions' responses. Many employees, including faculty and staff, made public statements, filed complaints, and otherwise expressed their views about schools reacting insufficiently or excessively to post–October 7, 2023, protests and other incidents on campus.[36]

Palestinian Students, New Yorker (July 21, 2025), https://www.newyorker.com/news/the-lede/a-federal-trial-reveals-the-sprawling-plan-behind-trumps-attacks-on-pro-palestinian-students [https://perma.cc/E778-U6QZ] (discussing the arrests of multiple students and evidence related to the State Department's student-visa-revocation plans); Joshua Mitts & David Pozen, Opinion, In Defense of Our Shared Values, Colum. Spectator (Feb. 13, 2025), https://www.columbiaspectator.com/opinion/2025/02/13/in-defense-of-our-shared-values/ [https://perma.cc/4DEW-6FLC] (describing the "weaponization of deportation" and arguing that "threatening students with deportation for participating in peaceful protests or voicing inflammatory opinions" on campus also threatens the academic mission).

34. See Johanna Alonso, Are Students Who Protested Losing Out on Job Opportunities?, Inside Higher Ed (June 18, 2024), https://www.insidehighered.com/news/students/careers/2024/06/18/student-protesters-face-scrutiny-job-search [https://perma.cc/M89U-FVH8] (discussing a report in which nearly thirty percent of student participants in pro-Palestinian campus protests indicated they had a job offer withdrawn in the previous six months).

35. See, e.g., Collin Binkley, A Year Into the Israel–Hamas War, Students Say a Chill on Free Speech Has Reached College Classrooms, AP News, https://apnews.com/article/gaza-israel-palestinians-campus-protest-anniversary-46faa669edb6b8bf1da6f670f6186bbc [https://perma.cc/5BGA-P4TR] (last updated Oct. 6, 2024) (describing a tense environment on many campuses and quoting one student's observation that "[i]t's very stifling . . . . I think there's a silent majority who aren't speaking" (internal quotation marks omitted) (quoting Nivriti Agaram, Student, George Washington Univ.)); Nicolas Niarchos, CUNY and Columbia: A Tale of Two Campuses, (May 16, 2024), https://www.thenation.com/article/activism/ccny-columbia-disparities-protests-charges/ [https://perma.cc/4HMC-P7XZ] (describing disproportionately harsh charges against protesters arrested at City College of New York, a public institution attended predominantly by working-class students of color, as compared to those arrested at Columbia University); Gloria Oladipo, 'A Warning for Students of Color': ICE Agents Are Targeting Certain Protesters, Say Experts, The Guardian (Mar. 26, 2025), https://www.theguardian.com/us-news/2025/mar/26/us-universities-students-israel-palestine-protests [https://perma.cc/B6GK-H58K] ("Despite white students, professors and academics also being heavily involved in pro-Palestine protests, people of color have disproportionately faced sudden arrests and threats of deportation or had their visas revoked."); Jessica Priest, After Immigration Crackdown, International Students in Texas Self-Censor to Protect Their Education, Tex. Trib. (May 9, 2025), https://www.texastribune.org/2025/05/09/texas-international-students-immigration-fears/ [https://perma.cc/528A-TZTZ] (reporting that "[e]ven foreign-born students who weren't identified for removal began worrying" about their immigration statuses, cancelling trips home, not going out alone, and deleting social media accounts).

36. See, e.g., Maya Yang, Professors Condemn Columbia Crackdown on Pro-Palestine Students, The Guardian (Apr. 20, 2024), https://www.theguardian.com/world/2024/apr/20/columbia-barnard-student-protesters [https://perma.cc/47CN-FYGM] (reporting on a joint statement issued by Columbia and Barnard professors condemning the Columbia

Numerous school leaders endeavored to address these challenges by announcing task forces, disciplinary responses, new rules and resources, and various other actions, some in response to recommendations from task forces and outside organizations, and others in response to resolution agreements with the Department of Education's Office for Civil Rights (OCR) or in settlements of private litigation.[37]

This complex and still-evolving set of circumstances provides the context for the discussion below.

I. DISTORTING TITLE VI

Title VI of the 1964 Civil Rights Act[38] has become the stage for battles over free expression and academic freedom on college campuses, channeling complex debates over viewpoint diversity, the extent to which campuses are fora for protests, and how to best protect students from offensive speech. Antidiscrimination law might be well-suited to remedy

---

president's "acceptance of partisan charges that anti-war demonstrators are violent and antisemitic and in her unilateral and wildly disproportionate punishment of peacefully protesting students" (internal quotation marks omitted) (quoting Barnard & Columbia Chapters of the Am. Ass'n of Univ. Professors, Joint Statement (Apr. 19, 2024), https://philosophy.columbia.edu/sites/philosophy.columbia.edu/files/content/Joint%20Statement%20by%20the%20Barnard%20and%20Columbia%20Chapters%20on%20the%20events%20of%20April%2017th%20and%2018th.pdf [https://perma.cc/JCP5-9VSD])); see also Ben Raab & Benjamin Hernandez, Over 1,400 Alumni, Faculty, and Parents Sign Letter Calling on Yale to Combat Antisemitism, Yale Daily News (Nov. 28, 2023), https://yaledailynews.com/blog/2023/11/28/over-1400-alumni-faculty-and-parents-sign-letter-calling-on-yale-to-combat-antisemitism/ [https://perma.cc/Z8KD-ADA3] (discussing a letter issued by faculty, alumni, and parents stating that "Yale has enabled a climate of hostility to Jews and pro-Israel voices" and calling for Yale to do more to prevent antisemitism (internal quotation marks omitted) (quoting the letter)).

37. See supra note 21 (listing task force reports); see also, e.g., Advancing Columbia University's Work to Combat Antisemitism, Colum. U.: Off. President, https://president.columbia.edu/content/combatting-antisemitism (on file with the *Columbia Law Review*) (last visited Sep. 12, 2025); Fighting Antisemitism and Protecting Civil Rights, Corn. U., https://president.cornell.edu/initiatives/fighting-antisemitism-protecting-civil-rights/ [https://perma.cc/6LAF-3XDH] (last visited Sep. 12, 2025); Progress Report on Northwestern University Efforts to Combat Antisemitism, Nw. U. (Aug. 5, 2025), https://www.northwestern.edu/leadership-notes/statements/2025/progress-report-on-northwestern-university-efforts-to-combat-antisemitism.html [https://perma.cc/T3QG-JFSR]; University of Minnesota's Commitment to Combating Islamophobia, U. Minn., https://youru.umn.edu/university-minnesotas-commitment-combating-islamophobia [https://perma.cc/9RXT-NRN6] (last visited Sep. 12, 2025).

For news media analyses, see, e.g., Kate Hidalgo Bellows, Colleges Created Task Forces to Address Reports of Antisemitism and Islamophobia. What Have They Done?, Chron. Higher Educ. (July 17, 2024), https://www.chronicle.com/article/colleges-created-task-forces-to-address-reports-of-antisemitism-and-islamophobia-what-have-they-done (on file with the *Columbia Law Review*); Jake Offenhartz, Barnard Settles Lawsuit Brought by Jewish Students, Agreeing Not to Meet With Pro-Palestinian Group, AP News, https://apnews.com/article/barnard-college-israel-protests-lawsuit-409301bcb85e80876da2967da492ad83 [https://perma.cc/CH2N-K5KU] (last updated July 7, 2025).

38. 42 U.S.C. § 2000d (2018).

the extremes—those clear instances such as epithets, threats, or assaults in which harassment by peers limits the ability of students to participate on campus and schools fail to appropriately address these violations. But it is not designed for, nor has it been effective as, a tool for negotiating the difficulties of balancing free expression with identity-based harm. Mediating these difficulties will be necessary to deal effectively with the protests and their aftermath that reoccur on college campuses.

This Part considers the recent punitive turn in the executive branch's use of Title VI, arguing that it is inconsistent with the language, design, and past implementation of the statute. At the same time this Part recovers the inclusionary goals that underlie Title VI, which this Piece argues could be harnessed to address campus conflicts while attending to and honoring both free expression and student well-being as laid out in Parts II and III.

A. *Title VI and Harassment on Campuses*

In the spring of 2025, the Trump Administration moved to terminate federal funding from several universities, claiming that these universities failed to sufficiently protect students from antisemitism on campus.[39] As this Part shows, the Administration's funding terminations were unprecedented in their reasoning and scale and far exceeded what the statute's language and design allow.

The invocation of the statute in connection with antisemitism and the Israel–Gaza protests built on previous guidance from OCR interpreting Title VI's prohibitions on race and national origin discrimination to apply to Jewish and Muslim students on the theory of "shared ancestry."[40] Title

---

39. See Sharon Otterman & Liam Stack, White House Cancels $400 Million in Grants and Contracts to Columbia, N.Y. Times (Mar. 7, 2025), https://www.nytimes.com/2025/03/07/nyregion/trump-administration-columbia-grants-cancelled-antisemitism.html (on file with the *Columbia Law Review*) (last updated Mar. 8, 2025); Vimal Patel, Trump Administration Will Freeze $2 Billion After Harvard Refuses Demands, N.Y. Times (Apr. 14, 2025), https://www.nytimes.com/2025/04/14/us/harvard-trump-reject-demands.html (on file with the *Columbia Law Review*).

40. See 2010 Guidance, supra note 6, at 5 ("[S]chool administrators should have recognized that the harassment was based on the students' actual or perceived shared ancestry or ethnic identity as Jews (rather than on the students' religious practices)."); Catherine E. Lhamon, Assistant Sec'y for C.R., U.S. Dep't of Educ., Dear Colleague Letter: Discrimination, Including Harassment, Based on Shared Ancestry or Ethnic Characteristics 1–2 (Nov. 7, 2023), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf [https://perma.cc/FAF9-EYQA] (noting that Title VI's protections extend to discrimination based on "shared ancestry or ethnic characteristics" and "citizenship or residency in a country with a dominant religion or distinct religious identity"); 2024 Guidance, supra note 7, at 1 ("Title VI's protections against discrimination based on race, color, and national origin encompass antisemitism . . . when based on shared ancestry or ethnic characteristics."). According to Professors Benjamin Eidelson and Deborah Hellman, the interpretation of Title VI to apply to Jewish students stems from a letter issued by the acting head of the Department of Education in 2004. See Eidelson & Hellman, supra note 6, at 5 n.31; see also Kenneth L. Marcus, Deputy Assistant Sec'y for Enf't, U.S. Dep't of Educ., Dear Colleague Letter (Sep.

VI shared ancestry complaints to OCR spiked after October 7, 2023, and the ensuing protests, including complaints by Jewish, Israeli, Muslim, Arab, and Palestinian students.[41]

The discrimination complaints arising out of the protests implicate Title VI's prohibition on actions that create a hostile educational environment for students,[42] a doctrine that predates the current battles over speech and protest related to the Israel–Gaza conflict.[43] The broader context of Title VI harassment law is necessary for understanding why the Trump Administration's moves to terminate federal funding are so at odds with the language, purpose, and past implementation of the statute. And it also serves as a reminder of the affirmative goal of Title VI in educational programs, which this Piece argues still has value: working toward environments in which students can flourish and fully participate regardless of their race, color, or national origin, including their shared ancestry.[44] That Title VI is now at the center of battles over free expression does have some relationship to prior battles over the reach and power of the statute to address racist incidents on campus.[45] But its current use by the Trump Administration escalates these contestations in ways that threaten the statute's fundamental aspiration of inclusion as well as the values of free expression and autonomy from government interference that universities require to thrive. Recent commentaries on Title VI often focus on the Trump Administration's funding threats, the campus protests, and antisemitism,[46] but returning to the statute's role in addressing race

---

13, 2004), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/religious-rights2004.pdf [https://perma.cc/K2E7-55B7] (signaling that OCR would address race and sex discrimination allegations that were "commingled with allegations of religious discrimination").

41. Off. for C.R., Dep't of Educ., 2024 Fiscal Year Annual Report 10, 27–34 (2024), https://www.ed.gov/media/document/ocr-report-president-and-secretary-of-education-2024-109012.pdf [https://perma.cc/8CGB-VRU9] [hereinafter Off. for C.R., 2024 Annual Report].

42. See, e.g., Letter from Anamaria Loya, Chief Reg'l Att'y, Region IX, Off. for C.R., U.S. Dep't of Educ., to Michael V. Drake, President, Univ. of Cal. (Dec. 20, 2024), https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09222257-a.pdf [https://perma.cc/JXH4-URUK] [hereinafter University of California Letter] (resolving harassment claims by Jewish, Israeli, Palestinian, Muslim and Arab ancestry students against five University of California campuses).

43. See infra notes 54–58 and accompanying text.

44. See supra note 2.

45. See infra section II.A.

46. See, e.g., Jacob Gersen & Jeannie Suk Gersen, The Six Bureaucracy 3 (Harvard Pub. L., Working Paper No. 25-20, 2025), https://papers.ssrn.com/abstract_id=5199652 [https://perma.cc/N3TF-ZP72] [hereinafter Gersen & Suk Gersen, Six Bureaucracy] (describing the rise in the use of Title VI against universities after October 7, 2023); Mark Tushnet, Some Thoughts About Free Speech and Hostile Environment Discrimination on College Campuses 6–9 (Harvard Pub. L., Working Paper No. 25-09, 2024), https://papers.ssrn.com/abstract_id=4989853 [https://perma.cc/77MR-ZNNV] (providing hypotheticals of possible hostile environment claims involving campus protests and allegations of antisemitism and Islamophobia).

discrimination widens the ambit away from more recent and polarizing campus protests and allows us to take a more calibrated view of the statute's limits and potential value in addressing the free expression and antidiscrimination challenges on college campuses.

The hostile educational environment standard emanates from the statute's core purpose in providing educational access to those excluded from schools and universities, primarily Black students. When it was enacted in 1964, Title VI represented an extraordinary mobilization of federal power to put pressure on school districts that refused to desegregate after *Brown v. Board of Education*.[47] It put in place the framework of conditioning federal funds on school districts' compliance with administrative and judicial desegregation orders. And Title VI did so with considerable success in its early years: Desegregation was stalled in much of the Deep South until the statute's passage and implementation.[48] Title VI would also play a significant role in the desegregation of higher education institutions, though this came only after civil rights groups brought litigation against the predecessor agency to the Department of Education—the Department of Health, Education, and Welfare (HEW)—for its failure to implement the statute's desegregation mandate.[49] Though initially slow, commentators credit Title VI enforcement with the development of desegregation plans in higher education institutions throughout the South.[50]

The hostile educational environment standard—the notion that students or faculty could create conditions on campus so offensive as to deny students educational opportunity[51]—emerged as a second-generation racial inclusion issue.[52] The doctrine took shape as a response

---

47. 347 U.S. 483 (1954); see also Gerald N. Rosenberg, The Hollow Hope: Can Courts Bring About Social Change? 47 (2d ed. 1993) (describing the 1964 Act containing Title VI as the "most sweeping civil rights legislation since the Civil War and Reconstruction era").

48. See Gary Orfield, The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act 102–03 (1969); Rosenberg, supra note 47, at 47; Lia Epperson, Undercover Power: Examining the Role of the Executive Branch in Determining the Meaning and Scope of School Integration Jurisprudence, 10 Berkeley J. Afr.-Am. L. & Pol'y 146, 152–57 (2008).

49. See Adams v. Richardson, 480 F.2d 1159, 1164 (D.C. Cir. 1973) (en banc) (per curiam) (affirming that HEW had failed to properly implement Title VI with respect to developing desegregation plans at colleges and universities); 1 William A. Kaplin & Barbara A. Lee, The Law of Higher Education: A Comprehensive Guide to Legal Implications of Administrative Decision Making 1450–52 (4th ed. 2006) (documenting the *Adams* litigation).

50. See Mary Ann Connell, Race & Higher Education: The Tortuous Journey Toward Desegregation, 36 J. Coll. & Univ. L. 945, 955 (2010) (documenting how, after the *Adams* litigation, HEW began to enforce higher education desegregation plans in Alabama, Louisiana, Mississippi, and Tennessee).

51. See infra notes 54–59 and accompanying text.

52. Cara McClellan, Discrimination as Disruption: Addressing Hostile Environments Without Violating the Constitution, 34 Yale L. & Pol'y Rev. Inter Alia 1, 3 (2015),

to the harassment of students of color on newly integrated college and university campuses, often amid objections that Black students in particular deserved to be there.[53] The standard for peer harassment in schools and universities derives from the harassment standard developed by the Supreme Court in the Title VII sexual harassment case *Meritor Savings Bank v. Vinson*.[54] Drawing on *Meritor*, the Supreme Court mapped out the standard for student-on-student harassment in the Title IX case *Davis v. Monroe County Board of Education*: The harassing behavior must be "so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities."[55] *Davis* explained that determining when harassment rises to a level of a statutory violation requires considering "'a constellation of surrounding circumstances, expectations, and relationships,' including, but not limited to, the ages of the harasser and the victim and the number of individuals involved."[56] In private lawsuits for money damages, the standard for a school's liability is that the school (which includes colleges and universities that receive federal funding) must be "deliberately indifferent" to discriminatory conditions on campus of which the school has actual or constructive notice.[57] It also must have "substantial control

---

https://yalelawandpolicy.org/sites/default/files/IA/discrimination_as_disruption_0.pdf [https://perma.cc/VR4H-MCM4].

53. See Timothy C. Shiell, Campus Hate Speech on Trial 4 (2d ed. 2009) ("Advocates typically viewed the increase in hate speech on college campuses in the late 1980s and early 1990s as a reaction to increased diversity on campus, a kind of lashing out to protect old ways and old privileges that benefited white males."); McClellan, supra note 52, at 7 (arguing that disruption that makes minority students feel unwelcome on campus "is precisely what hostile environment discrimination law is concerned with"); Wornie L. Reed, Commentary: The Role of Universities in Racial Violence on Campuses, Trotter Inst. Rev., Mar. 1989, at 3, 3–4 (describing racist jokes, "mock slave auctions," threats, swastikas, white-supremacist graffiti, minstrel shows, oral and written transmission of the n-word, and other acts on college campuses in the 1980s and situating the incidents in the context of racial violence and the rise in political "code words" that demeaned Black people (internal quotation marks omitted) (quoting Professor William Damon)); Walter C. Farrell, Jr. & Cloyzelle K. Jones, Recent Racial Incidents in Higher Education: A Contemporary Perspective, 4 ISSR Working Papers Soc. Scis., no. 19, 1988, at 1, 3 ("Contemporary reported racial incidents in higher education largely have been a result of conflicts between Black and White students. . . . Racist threats, remarks, slurs, graffiti and fliers tended to predominate, while beatings, brawls and cross burnings were less prominent.").

54. 477 U.S. 57, 66–77 (1986) (establishing that harassment can constitute a hostile environment if such harassment is "sufficiently severe or pervasive"). The *Meritor* standard originated with the EEOC's guidance that Title VII covered hostile environment discrimination. Id. at 65; see also 29 C.F.R. § 1604.11(a)(3) (2025).

55. 526 U.S. 629, 651 (1999).

56. Id. (citation omitted) (quoting Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 82 (1998)).

57. Id. at 641.

over both the harasser and the context in which the known harassment occurs."[58]

OCR has rendered this standard into administrative guidance for federal grantees subject to Title VI, stating that the conduct must be "severe or pervasive" (using the disjunctive)[59] enough to deny or limit a student's ability to participate in or benefit from the educational program.[60] OCR guidance states that a school may be found to have violated Title VI when it fails to take prompt and effective steps reasonably calculated to end harassment, eliminate the hostile environment, and prevent its recurrence.[61]

In both administrative and judicial contexts, this high standard for finding harassment means that harassment law does not address the full range of hostile acts, statements, attitudes, microaggressions, and "low-grade" discrimination that often makes students deeply uncomfortable or upset in college settings[62] but that fall below the level of severe and

---

58. Id. at 645.

59. 2024 Guidance, supra note 7, at 4. By some analyses, the use of the disjunctive for peer-on-peer harassment is incorrect. See Todd E. Pettys, Hostile Learning Environments, the First Amendment, and Public Higher Education, 54 Conn. L. Rev. 1, 20–22 (2022) (arguing that there should be a difference in using *Davis*'s "and" for peer-on-peer harassment, as opposed to the "or" formulation for teacher-to-student harassment, because in the former situation "students . . . can be expected to protect themselves with the same kinds of self-help strategies they use when managing interpersonal conflicts in the larger community").

60. 2024 Guidance, supra note 7, at 4; see also Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11,448, 11,449 (Mar. 10, 1994) (explaining how OCR looks at the severity, pervasiveness, or persistence of harassing conduct to determine whether a violation of Title VI occurred).

61. 2024 Guidance, supra note 7, at 4.

62. See, e.g., Janelle T. Billingsley & Noelle M. Hurd, Discrimination, Mental Health and Academic Performance Among Underrepresented College Students: The Role of Extracurricular Activities at Predominantly White Institutions, 22 Soc. Psych. Educ. 421, 423–26 (2019) (reviewing literature on the negative effects of perceived discrimination on underrepresented college students); Janice McCabe, Racial and Gender Microaggressions on a Predominantly-White Campus: Experiences of Black, Latina/o and White Undergraduates, 16 Race, Gender & Class 133, 134, 138 (2009) (finding that Black and Latine students who experienced microaggressions on predominantly white campuses were more likely to experience isolation than white students); Cheyenne McQueen, Desa K. Daniel & Barbara Thelamour, The Relationship Between Campus Climate Perceptions, Anxiety, and Academic Competence for College Women, 41 Coll. Student Affs. J. 138, 140–41 (2023) (summarizing research on how challenges in the campus climate for women, including the campus racial climate, can negatively affect the sense of belonging on campus for students of color); Amaury Nora & Alberto F. Cabrera, The Role of Perceptions of Prejudice and Discrimination on the Adjustment of Minority Students to College, 67 J. Higher Educ. 119, 120–21 (1996) (describing studies finding that "perceptions of prejudice (racial climate) may lower the quality of college experiences of minority students" and even explain the higher frequency of minority students withdrawing from college relative to nonminority students); Carola Suárez-Orozco, Saskias Casanova, Margary Martin, Dalal Katsiaficas, Veronica Cuellar, Naila Antonia Smith & Sandra Isabel Dias, Toxic Rain in Class: Classroom Interpersonal Microaggressions, 44 Educ. Researcher 151, 157 (2015) (drawing

pervasive.[63] Rather, the hostile educational environment standard reaches only behavior and speech so offensive, severe, and pervasive that it produces objective interference with the ability of the victim to participate in educational activities, as well as subjective harm.[64] Prior to the current campus crises, administrative complaints and lawsuits often involved extremely abusive or exclusionary behavior, typically directed at specific individuals, including physical assaults, threats, violent imagery, racialized gestures, racist and antisemitic symbols, threats, epithets, and slurs.[65]

In response to Title VI harassment complaints, OCR has negotiated voluntary resolution agreements with schools in which the schools agree to improve campus climates and adjust their compliance regimes.[66] These include requiring antidiscrimination and anti-harassment training for administrators and staff; the expansion of reporting and tracking of harassment on campus; and fair and nondiscriminatory discipline.[67] As

---

data from sixty diverse classrooms on three community college campuses and finding microaggressions that undermined the intelligence and competence of students in nearly thirty percent of the observed classrooms).

63. See Suzanne B. Goldberg, Harassment, Workplace Culture, and the Power and Limits of Law, 70 Am. U. L. Rev. 419, 427 (2020) [hereinafter Goldberg, Power and Limits of Law] (introducing "'low-grade harassment,' a category of behaviors that are clearly harassing but not 'severe or pervasive' enough to meet doctrinal thresholds").

64. See Zeno v. Pine Plains Cent. Sch. Dist., 702 F.3d 655, 665–66 (2d Cir. 2012) ("The harassment must be 'severe, pervasive, and objectively offensive' and discriminatory in effect." (quoting Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 650–51 (1999))); Hayut v. State Univ. of N.Y., 352 F.3d 733, 745 (2d Cir. 2003) ("[A] 'hostility' determination in the educational context . . . entails examining the totality of the circumstances, including: 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with' the victim's academic performance." (quoting Harris v. Forklift Sys., 510 U.S. 17, 23 (1993))); Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. at 11,449 ("[I]t must be determined if the racial harassment is severe, pervasive or persistent. . . . The harassment must in most cases consist of more than casual or isolated racial incidents to establish a title VI violation.").

65. See, e.g., McClellan, supra note 52, at 5–6 (describing complaints against the University of California, San Diego which entailed public displays of nooses and "a Ku Klux Klan-style hood"); Educational Opportunities Cases, DOJ, https://www.justice.gov/crt/educational-opportunities-cases [https://perma.cc/N3RS-39RW] (last updated July 25, 2025) (listing previous federal cases involving race-based discrimination in educational settings).

66. See, e.g., Resolution Agreement Between the University of California, San Diego, the U.S. Department of Justice, Civil Rights Division, and the U.S. Department of Education, Office for Civil Rights (Apr. 13, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2012/04/25/ucsdresolutionagreement.pdf [https://perma.cc/6C3P-3FEY] (detailing an agreement between the Departments of Justice and Education and the University of California San Diego requiring changes in investigatory procedures, training programs, and on-campus student support).

67. See McClellan, supra note 52, at 5 (describing possible remedies of OCR investigations finding discrimination); Office for Civil Rights Recent Resolution Search, 44 results (Sep. 9, 2025), https://ocrcas.ed.gov/ocr-search?keywords=&recipient_name=&race_and_national_discrimination%5B0%5D=554&keywords_title_vi=&recipient_name_title_vi=&title_vi=526&f%5B0%5D=it%3APost%20Secondary [https://perma.cc/BBU3-U4A7]

discussed further in Part II, while OCR has not resolved the hard question of how to balance free expression and harassment, it has focused compliance not on funding cut-offs, but on strengthening the on-campus Title VI enforcement infrastructure.[68]

It is important to note that until the spike of shared ancestry claims in 2023 and 2024, most institutions did not have a robust Title VI compliance regime.[69] Many lacked race-related anti-harassment training or Title VI coordinators or had minimal programs relative to their compliance efforts under Title IX of the Education Amendments of 1972 and federal disability law.[70] This is despite the fact that research and surveys have consistently documented adverse campus climates and racism on campus experienced by students of color—particularly by Black students at predominantly white institutions. What students report as pervasive racism and hostility on college campuses has been a major contributor to poor mental health, disparities in educational outcomes, and increased drop-out rates for Black students and students from other minority, traditionally disfavored, or disadvantaged backgrounds.[71] In addition to being disproportionately subjected to violence and profiling by campus security and police—along with hate crimes in the communities that surround campus—students of color report a range of incidents of racism on campus, including racially motivated violent assaults committed by other students,[72] racist epithets and slurs, videos celebrating racial

---

(filtered by "Post Secondary", "Racial Harassment (Race and National Origin Discrimination)") (showing results for Title VI harassment cases resolved by the Department of Education).

68. But see Pettys, supra note 59, at 19 (arguing that hostile education environment law's emphasis that schools must respond to harassment with efforts "reasonably calculated to end [the] harassment" can raise First Amendment concerns (alteration in original) (quoting Feminist Majority Found. v. Hurley, 911 F.3d 674, 689 (4th Cir. 2018))).

69. Alonso, Now Hiring, supra note 16.

70. See id. (describing how "[m]ost schools have a Title IX coordinator and an accessibility services coordinator," which creates a "gray zone" in which schools neither understand their Title VI obligations nor "know where to place that role" (internal quotation marks omitted) (quoting Beth Gellman-Beer, a former OCR employee)); see also supra note 16.

71. See Gallup, Inc. & Lumina Found., Balancing Act: The Tradeoffs and Challenges Facing Black Students in Higher Education 1–2 (2023), https://www.luminafoundation.org/wp-content/uploads/2023/02/Black-Learners-Report-2023.pdf [https://perma.cc/VV9K-4X22] (noting that Black students are more likely to say that they feel "disrespected and physically or psychologically unsafe"); Melba Newsome, Black Students Experiencing Racism on Campus Lack Mental Health Support, KFF Health News (Apr. 1, 2022), https://kffhealthnews.org/news/article/black-students-experiencing-racism-on-campus-lack-mental-health-support/ [https://perma.cc/LT8A-8R3V] (collecting studies and reports of depression, anxiety, and the absence of culturally competent mental health supports experienced by college students of color).

72. See, e.g., Michael Grigsby, Hate Crimes on College Campuses—How Policymakers and Accreditors Can Create a Safer Learning Environment for Students, EdTrust (Sep. 23, 2024), https://edtrust.org/blog/hate-crimes-on-college-campuses/ (on file with the *Columbia Law Review*) (noting a rise in hate crimes on college campuses between 2015 and

violence, stereotypical or mocking depictions of people of color, burnings of books written by authors of color, and white supremacist speeches.[73]

Researchers who work on these issues do not look regularly to Title VI's harassment framework as the fix for these pervasive concerns but instead recommend changes to the structural and cultural contexts that produce racism and other forms of exclusion.[74] This point bears emphasis to ensure that any approach by universities or agencies to the new wave of "shared ancestry" complaints also attends to long-standing problems facing students of color on campuses. And it suggests caution in placing too much faith in Title VI enforcement as some advocates and government actors are pressing its use as a way to address antisemitism.

B. *The Illegality of Termination*

The Trump Administration's actions beginning in the spring of 2025 represent a dramatic shift in the use of Title VI. The opening move came in March 2025, when the General Services Administration, the Department of Health and Human Services, and the Department of Education sent a letter to Columbia University's then-president stating that the University had "failed to protect American students and faculty from antisemitic violence and harassment" and thus $400 million of federal funds to the University would be paused or terminated if the University did not meet a number of demands.[75] The Administration's demands

---

2021, the majority of which were targeted at members of racial minority groups, and also finding underreporting of hate crimes by students of color who lack trust in the reporting system); Press Release, DOJ, Justice Department Secures Agreement With Kansas Community College to Address Racial Discrimination and Harassment (Aug. 28, 2023), https://www.justice.gov/archives/opa/pr/justice-department-secures-agreement-kansas-community-college-address-racial-discrimination [https://perma.cc/9HXA-2EU8] ("Black students were targeted for searches and surveillance and disciplined more severely than their white peers, resulting in their unfair removal from campus housing or even expulsion."); see also infra note 177. The Clery Act requires higher education institutions to track and disclose data on crimes, including hate crimes. Jeanne Clery Campus Safety Act, 20 U.S.C. § 1092(f) (2018).

73. Newsome, supra note 71; see also Lois Beckett, Students Burn Latina Author's Book After She Discusses White Privilege, The Guardian (Oct. 13, 2019), https://www.theguardian.com/books/2019/oct/13/students-burn-book-latina-author-jennine-capo-crucet [https://perma.cc/5KCX-YJRJ].

74. See, e.g., Grigsby, supra note 72 (recommending that colleges improve the campus racial climate through "surveys to regularly evaluate student perceptions and address negative views held by peers and faculty toward students of color via educational initiatives aimed at reducing racial and ethnic biases").

75. Letter from Josh Gruenbaum, Comm'r, Fed. Acquisition Serv., Sean R. Keveney, Acting Gen. Couns., HHS & Thomas E. Wheeler, Acting Gen. Couns., U.S. Dep't of Educ., to Katrina Armstrong, Interim President, Columbia Univ., David Greenwald, Co-Chair, Columbia Bd. of Trs., & Claire Shipman, Co-Chair, Columbia Bd. of Trs. (Mar. 13, 2025), https://president.columbia.edu/sites/default/files/content/ltr.gsa_.hhs_.doe_.3-13-25.pdf (on file with the *Columbia Law Review*) [hereinafter Columbia Letter]. Even prior to this letter, the Administration announced the "immediate cancelation of approximately $400 million" in Columbia's federal grants and contracts "due to the school's continued inaction

included changes to student disciplinary policies and procedures stemming from campus protests; placement of the Department of Middle Eastern, South Asian, and African Studies "under academic receivership"; and reform of admissions to various schools within the University.[76] The University did not legally challenge the letter but entered into negotiations with the Administration, which were settled on July 23, 2025.[77] The Administration took even more dramatic action to terminate billions of dollars of federal funds against Harvard, a matter that is now being litigated.[78]

The dramatic invocation of the funding termination mechanism is at odds with the language of Title VI, which requires adherence to specific procedural steps and to constitutional due process before allowing a funding termination.[79] Specifically, agencies need to first attempt to

---

in the face of persistent harassment of Jewish students" and stated that "[t]hese cancelations represent the first round of action and additional cancelations are expected to follow." Press Release, U.S. Dep't of Educ., DOJ, HHS, ED, and GSA Announce Initial Cancellation of Grants and Contracts to Columbia University Worth $400 Million (Mar. 7, 2025), https://www.ed.gov/about/news/press-release/doj-hhs-ed-and-gsa-announce-initial-cancelation-of-grants-and-contracts-columbia-university-worth-400-million [https://perma.cc/3VN5-YUYB].

76. Columbia Letter, supra note 75.

77. Resolution Agreement Between the United States of America and Columbia University (July 23, 2025), https://president.columbia.edu/sites/default/files/content/July%202025%20Announcement/Columbia%20University%20Resolution%20Agreement.pdf [https://perma.cc/3VXC-TEKW] [hereinafter Columbia Agreement]. The agreement extends well beyond Title VI antisemitism-related matters (such as protests and student discipline) to the structure of academic departments, faculty hiring, race-based admissions, women's sports teams, and housing arrangements. See id.

78. See President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs., 798 F. Supp. 3d 77, 125, 128 (D. Mass. 2025) (granting partial summary judgment for Harvard on its Title VI and First Amendment claims).

79. 42 U.S.C. § 2000d-1 (2018); cf. Kate Andrias, Jessica Bulman-Pozen, Jamal Greene, Olatunde Johnson, Jeremy Kessler, Gillian Metzger & David Pozen, A Title VI Demand Letter that Itself Violates Title VI (and the Constitution), Balkinization (Mar. 15, 2025), https://balkin.blogspot.com/2025/03/a-title-vi-demand-letter-that-itself.html [https://perma.cc/D4LF-69BL] (outlining statutory and constitutional arguments against using Title VI as a basis for terminating federal funds to Columbia University). One should note that the Trump Administration has not been entirely clear or consistent in its explanation for its authority to terminate funds and grants to universities. See Defendants' Memorandum in Support of Their Cross Motion for Summary Judgment at 18, *President & Fellows of Harvard Coll.*, 798 F. Supp. 3d 77 (No. 1:25-cv-11048-ADB) (Dkt. 223) (arguing the case is not "Title VI or bust" and that the federal government should be able to "us[e] every tool at its disposal to combat discrimination, including negotiating contract terms that require a contractor to take antidiscrimination efforts seriously"); Harvard Letter, supra note 19 (stating, among other rationales, that federal "investment[s]" in Harvard are not "entitlement[s]," and that funding will only be restored if the university ends its "ideological capture"); Letter from Josh Gruenbaum, Comm'r, Gen. Servs. Admin., to Agency Senior Procurement Exec. (May 27, 2025), https://static.foxnews.com/foxnews.com/content/uploads/2025/05/harvard-contracts-gsa-letter.pdf [https://perma.cc/NX3Y-EDL8] (stating, among other rationales, that "being a counterparty with the federal government comes with the deep responsibility and commitment to . . . safeguard[] . . . taxpayer money"). This lack

negotiate a compliance agreement, and termination of funding for noncompliance can occur only if agreement cannot be reached voluntarily, proper notifications are made,[80] a hearing is held (if the funding recipient so chooses), and an "express finding" of noncompliance is made "on the record."[81] Even then, any such administratively adjudicated finding of noncompliance can only become final thirty days after the agency has filed a "full written report" with the relevant congressional committees delineating the basis for termination.[82]

These statutory procedural protections prior to a funding termination reflect Congress's caution in allowing the executive branch termination power. In the initial drafting of Title VI, the termination authority was highly contested.[83] Proponents argued that the threat of termination was important to get recipients of federal funds to comply with the Act's antidiscrimination requirements.[84] In debating the termination power, some members of Congress feared that the power of funding termination was too mighty and that the executive branch might abuse that power in the absence of procedural protections or that the executive branch might use Title VI punitively.[85] As a compromise,

---

of clarity (in addition to the lack of a constitutional basis for terminating funds) further compounds the due process problems caused by funding termination. The Columbia letter also mentions Title VII. See Columbia Letter, supra note 75 ("Columbia University, however, has fundamentally failed to protect American students and faculty from antisemitic violence and harassment in addition to other alleged violations of Title VI and Title VII of the Civil Rights Act of 1964."). It is hard to make sense of what authority exists under Title VII to threaten federal funding; these are not spelled out, and agencies have no funding termination authority under that statute. See 42 U.S.C. § 2000e. This Piece's analysis, however, focuses only on Title VI.

80. 42 U.S.C. § 2000d-1. The Department of Education Office for Civil Rights Case Processing Manual sets out a ninety-day period for negotiation of a compliance agreement, with an absolute minimum of thirty days under certain limited conditions, as well as numerous additional steps the Department must take prior to terminating funds. Off. for C.R., U.S. Dep't of Educ., Case Processing Manual 17–19, 23 (2025), https://www.ed.gov/media/document/ocr-case-processing-manual-us-department-of-education-office-civil-rights-33891.pdf [https://perma.cc/KB4E-548U].

81. 42 U.S.C. § 2000d-1.

82. Id. The statute also provides a separate remedy in which the DOJ can take the covered entity to court and seek compensatory and injunctive relief. 28 C.F.R. § 50.3 (2025).

83. See Stephen C. Halpern, On the Limits of the Law: The Ironic Legacy of Title VI of the 1964 Civil Rights Act 30–39 (1995) (describing debates over the termination power and its scope).

84. See id. at 23–24, 33–34 (describing arguments offered by civil rights advocates for allowing agencies to terminate funds to discriminatory state agencies).

85. See Hearings Before Subcomm. No. 5 of the H. Comm. on the Judiciary, 88th Cong. 1748–49 (1963) (including questioning by some House members on whether agencies should have authority to terminate given the large amounts of HEW money at stake); id. at 1788–89 (statement of Rep. Cramer) (discussing whether state agencies would have the right to review federal agency findings of discrimination); id. at 1889–91 (debating whether Title VI gave too much discretion to the President and federal agencies in determining whether funds should be terminated, and whether there would be a right of judicial review); id. at 2404 (statements of Reps. McCulloch & Celler) (urging a right to

Congress put in the constraining language of 42 U.S.C. § 2000d-1 requiring negotiation, a hearing, a finding on the record, and congressional review.[86] The enacting Congress also inserted a "pinpoint" requirement that limited the power of termination to the specific program that engaged in discrimination.[87] Congress retained this "pinpoint" requirement for funding termination even after it amended the statute in response to the *Grove City College v. Bell* case in which the Supreme Court limited the substantive reach of Title IX to the program or activity receiving federal funds.[88] In 1988, Congress amended the statute to provide that when any part of a school received federal funds, the entire school was covered by Title IX or Title VI[89] but specifically retained the pinpoint provision for funding termination.[90]

In addition, by congressional design and administrative practice, the implementation of Title VI (and Title IX) emphasizes voluntary compliance—the development of negotiated compliance agreements between schools and the agency.[91] While civil rights and racial justice groups have long criticized the federal government for not terminating funds to noncompliant institutions, the emphasis on securing agreements also serves to ensure that students are not punished by the defunding of schools and universities. As Judge David Tatel (the former chair of OCR) recently explained, the point of the termination tool was

---

judicial or administrative review of termination decisions); 88 Cong. Rec. 5606 (1964) (statement of Sen. Ervin) (arguing that the early version of Title VI lacked sufficient procedural protections prior to funding termination); id. at 5611 (statement of Sen. Ervin) (criticizing Title VI for excessive delegation of legislative power to executive agencies).

86. See, e.g., 88 Cong. Rec. 7060 (statement of Sen. Pastore) (emphasizing the procedural safeguards before termination).

87. 42 U.S.C. § 2000d-1; see 88 Cong. Rec. 7059–61 (statement of Sen. Pastore) (providing assurances on the Senate floor regarding the "pinpoint" provision); id. at 7059 (statement of Sen. Pastore) ("Title VI is not a device to terminate all Federal aid to a State . . . because there has been discrimination in one specific program. . . . It is not the intention . . . to enact punitive statutes. We do not wish to be vindictive. We do not wish to be punitive."); id. at 7060–66 (statement of Sen. Pastore) (emphasizing that the pinpoint requirement protects against widespread funding termination by requiring specific findings of discrimination and noncompliance).

88. See 465 U.S. 555, 573–74 (1984).

89. Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, § 3(a), 102 Stat. 28, 28–29 (codified as amended at 20 U.S.C. § 1687 (2018)).

90. See S. Rep. No. 100-64, at 20 (1987) (specifying that the pinpoint provisions would remain in effect in the enforcement structure of the statutes).

91. See Brief of Amici Curiae Former United States Agency Officials in Support of Plaintiff's Motion for Summary Judgement exh. B ¶ 6, President & Fellows of Harvard Coll. v. Dep't of Health & Hum. Servs., 798 F. Supp. 3d 77 (D. Mass. 2025), (No. 1:25-cv-11048-ADB) (Dkt. 176-2) [hereinafter Tatel Declaration] ("[T]he voluntary compliance element of Title VI was central to the statutory scheme. No matter how egregious the discrimination, Title VI bars the government from cutting off federal funds unless there is no genuine chance of a voluntary resolution.").

to rarely have to use it.[92] Negotiated compliance leveraged federal funds to promote student inclusion, not to threaten the existence of public or private institutions.[93]

There is scarce evidence that federal funds were historically terminated to institutions. Political scientist Stephen Halpern, who has written extensively about Title VI, has documented funding terminations to K–12 school districts that refused to admit Black students in the late 1960s.[94] In a declaration, Judge Tatel described a series of important negotiations and eventual DOJ-adjudicated consent decrees with the most recalcitrant schools and universities that refused to desegregate, but he could remember no funding termination.[95] There is no evidence that, until recently, funds were ever terminated to an institution because of a hostile educational environment, much less one that required balancing the rights and norms of free expression that Part II describes.

Civil rights groups have criticized agencies' emphasis on voluntary compliance in Title VI as ineffectual.[96] But other commentators have criticized Title VI for allowing the federal government to exercise extensive power under the shadow of formal legal constraint since the prospect of federal investigation and the specter of federal funding loss is enough to induce compliance.[97] One way to make sense of these competing conceptions is that the statute in its design and its implementation allows the federal government considerable formal and informal power through the leveraging of federal funding, but it also requires the agency to proceed with care after understanding the institutional objectives and honoring the autonomy of the college or university. Judge Tatel described this balance during his time leading OCR: "Because college and university leaders knew their systems better than the federal government and to respect the independence and autonomy of . . .

---

92. Id. ¶ 7 ("We treated termination as a matter of last resort because we understood that cutting off federal funds was like dropping an atom bomb: everyone gets hurt, especially the students and others the funds were intended to help."). Judge Tatel was the director of OCR from 1977 to 1979. Id. ¶ 2.

93. A federal agency also has no independent power to condition or terminate federal funds that Congress has authorized to grantees. The Constitution vests Congress, not the executive, with the power to spend money and condition its use. U.S. Const. art. I, § 8, cl. 1; see also Cummings v. Premier Rehab Keller, P.L.L.C., 142 S. Ct. 1562, 1570 (2022) (explaining Congress's power to condition federal funds under the Spending Clause). And Spending Clause legislation must provide recipients "clear notice" of the funding terms and conditions. Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 548 U.S. 291, 296 (2006).

94. See Halpern, supra note 83, at 49, 55 (describing instances in which HEW decided to terminate funding to school districts that refused to follow desegregation guidelines).

95. Tatel Declaration, supra note 91, ¶¶ 10–15.

96. See, e.g., The Civil Rights Act 40 Years Later, Ctr. for Am. Progress (July 2, 2004), http://www.americanprogress.org/issues/women/news/2004/07/02/891/the-civil-rights-act-40-years-later [https://perma.cc/9T9Y-87FJ] ("Title VI is a potentially powerful tool, but regrettably remains the sleeping giant of civil rights laws.").

97. Halpern, supra note 83, at 34.

higher education systems," OCR allowed higher education systems the chance to first develop their own compliance plans.[98]

Applied to the current contestations over antisemitism on university campuses, a sincere and thorough response would leverage Title VI to require the federal government, with the participation of schools and universities, to cocreate solutions and programs that would balance free expression with inclusion goals and ensure compliance with the statute consistent with the university's academic mission. Part III provides further discussion of what such a process might entail and produce.

C. *Title VI as Punishment*

Rather than honoring the inclusionary aspirations of Title VI while taking account of institutional values such as academic autonomy and free expression, the executive branch is transforming Title VI into an instrument of punishment. Invoking the draconian remedy of termination vitiates the institutional conditions and space necessary to sort through the enduring challenges of balancing free expression with antidiscrimination.[99] Combined with the arrest, detention, and threatened deportation of protesting students,[100] this punitive approach to Title VI instead creates a climate of fear on campuses for students, faculty, and staff. It also creates incentives for the development of on-campus disciplinary regimes that emphasize punishment for protest and dissent through suspension and expulsion. These punitive regimes place less emphasis on nonpunitive redress, prevention, or strategies to enable students to de-escalate campus conflicts or increase their ability to engage across racial, religious, political, or ideological differences.

The use of Title VI in this way—without following the statutory procedures—lends itself to the view that ultimately the current Administration is less interested in producing inclusive environments free from discrimination than in punishing universities for having the very qualities one associates with higher education: diversity of viewpoint, a culture that fosters dissent and critical inquiry, and persistent challenging

---

98. Tatel Declaration, supra note 91, ¶ 17 (describing negotiations that followed those plans that would sometimes last for months).

99. See infra Part II.

100. See Exec. Order No. 14,188, 90 Fed. Reg. 8847, 8848 (Jan. 29, 2025) (authorizing relevant federal agency heads to issue recommendations for "familiarizing institutions of higher education with the grounds for inadmissibility under 8 U.S.C. 1182(a)(3) so that such institutions may monitor for and report activities by alien students"); Jasmine Garsd & Joel Rose, The Controversial and Obscure Law Being Used Against Immigrant Student Protestors, NPR (Apr. 11, 2025), https://www.npr.org/2025/04/11/nx-s1-5360605/mahmoud-khalil-gaza-protests-columbia-university-immigrant [https://perma.cc/9AZT-5NXX] (describing the law used to detain Columbia graduate and green card holder Mahmoud Khalil for his participation in pro-Palestinian protests).

of conventional wisdom.[101] That the agreements spurred by concerns about antisemitism go beyond addressing antisemitism to deal with university governance,[102] curriculum,[103] admissions,[104] and "all-female sports, locker rooms, and showering facilities"[105] suggests that the executive branch is using Title VI to broadly control universities.

As Title VI becomes an instrument for punishing and controlling universities, it might be tempting to abandon the statute entirely. This may be particularly appealing given the doctrinal challenges related to balancing free expression and academic freedom with the antidiscrimination goals that are discussed in Part II, a tension that neither courts nor administrative agencies have ever fully resolved. This Piece takes the position, however, that the inclusionary aspirations of the statute described in section I.A are well worth preserving and fulfilling in order to support student thriving on campus.

II. RECONCILING ANTIDISCRIMINATION AND FREE EXPRESSION

Beyond the violation of administrative procedures, there are other difficulties in using Title VI's prohibitions on harassment to manage campus controversies. Current campus debates over free speech and antisemitism reflect long-standing contestations over how to balance free speech and antidiscrimination on college campuses.[106] While the protests

---

101. See Vicki C. Jackson, The Trump Administration's Attack on Knowledge Institutions, Verfassungsblog (Mar. 28, 2025), https://verfassungsblog.de/education-democracy-america/ [https://perma.cc/Z3XP-BK56] ("Knowledge institutions—including universities, the truth-oriented press, government offices with data collection or scientific responsibilities—are crucial for constitutional democracies. They have as a central mission the search for truth or better understandings, through independent application of disciplinary or professional standards of reliability."); see also Vicki C. Jackson, Knowledge Institutions in Constitutional Democracies: Preliminary Reflections, 7 Canadian J. Compar. & Contemp. L. 156, 159 (2021) ("Knowledge institutions are fundamental to . . . democracy. They span the public and the private sectors. They include universities[;] . . . the press[;] . . . elementary and secondary educational institutions; libraries and museums, public and private; government offices that collect, analyze or make available objective data[;] . . . and non-governmental organizations . . . that do the same.").

102. See Columbia Agreement, supra note 77, at 10–11 (requiring that Columbia's disciplinary process be removed from the University Senate and administered by the Office of the Provost).

103. See id. at 6 (requiring a review of Middle East–related programs and curriculum).

104. See id. at 8 (requiring that Columbia "maintain merit-based admissions policies," "not use personal statements, diversity narratives, or . . . racial identity as a means to introduce or justify discrimination," and provide admissions data to the federal government "broken down by race, color, grade point average, and performance on standardized tests"); id. at 9 (requiring a "comprehensive review of [Columbia's] international admissions processes").

105. Id. at 9.

106. See, e.g., Charles R. Lawrence III, If He Hollers Let Him Go: Regulating Racist Speech on Campus, 1990 Duke L.J. 431, 434 (highlighting the quandary created by the conflict between racist speech on college campuses and the desire to protect free speech);

following October 7, 2023, were distinct in their scale and focus, they stemmed from recurring dynamics that inhere on college campuses and universities, which are thus unlikely to be fully solved. Channeling these longstanding tensions on university campuses through Title VI's liability standard simultaneously threatens free expression values on campus while failing to produce the full measures necessary to promote student thriving, participation, and interaction on college campuses.

This Part examines the long-standing and unresolved doctrinal tensions between free expression and antidiscrimination. It argues that these tensions persist doctrinally because the conflicts are both inevitable in the university context and connected to hallmarks that one celebrates in universities. This is *not* to celebrate disruptive or harmful speech. Part III argues that universities should employ strategies outside the disciplinary process that discourage offensive speech and that encourage student flourishing and intellectual inquiry. This Part, however, emphasizes that these conflicts over identity and free expression arise because of the confrontation of ideas, politics, the passion of young people, the diversity among students, and the relative freedom from family and community constraints that produces exploration of new ideas, dissent, protest, and sometimes even recklessness.[107] As this Part shows, both normatively and doctrinally, Title VI is a limited tool for managing the resulting friction.

A. *Round One: Campus Codes and Free Speech*

Harassment law has long been vulnerable to the argument that it infringes on First Amendment rights. While recent decisions of the Supreme Court emphasize the need for conscience exceptions to generally applicable antidiscrimination laws,[108] the Supreme Court has not resolved the precise question of whether antidiscrimination law's hostile environment standard infringes on the First Amendment. The closest the

---

Nadine Strossen, Regulating Racist Speech on Campus: A Modest Proposal?, 1990 Duke L.J. 484, 503–06 (detailing the debate over regulating free speech on college campuses and the relevant First Amendment concerns).

107. See Kelsey Ann Naughton, Found. for Individual Rts. & Expression, Speaking Freely: What Students Think About Expression at American Colleges 13 (2017), https://www.thefire.org/sites/default/files/2017/10/11091747/survey-2017-speaking-freely.pdf [https://perma.cc/N262-ET9E] (detailing college students' willingness to expose themselves to unfamiliar ideas and opinions).

108. See 303 Creative LLC v. Elenis, 143 S. Ct 2298, 2313 (2023) (holding that the First Amendment shielded a website designer from complying with a state public accommodations law that she alleged would compel her to create work that violated her values); Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct 2049, 2055 (2020) (extending the Age Discrimination in Employment Act's ministerial exception to a lay teacher in a Catholic school); Burwell v. Hobby Lobby Stores, 573 U.S. 682, 690–91 (2014) (allowing a closely held, for-profit corporation a religious exemption from federal law requiring contraceptive coverage).

Court came to ruling on this question came in *R.A.V. v. City of St. Paul*.[109] There, the Court held that the First Amendment's prohibition on viewpoint discrimination forbade a city from criminalizing racially motivated cross-burning, and dictum in Justice Antonin Scalia's opinion left an opening for workplace harassment law on the theory that it was "directed not against speech but against conduct."[110]

Resolving the line between free expression and harassment became crucial in the 1980s, a period in which schools and universities took action to address nooses, cross-burnings, graffiti, and racial threats by enacting disciplinary codes of conduct.[111] Many of the disciplinary codes went further than addressing epithets and threats or individualized harassment and were ultimately struck down under the First Amendment.[112] One of the most famous cases—*Doe v. University of Michigan*—arose after a series of racist incidents at the University of Michigan over a three-year period in the late 1980s.[113] As described by the district court that eventually reviewed the speech code, these incidents included the distribution of a flier using racial epithets against Black students, a student DJ making racist jokes on an on-campus radio show, and someone displaying a KKK outfit in a dormitory window.[114] The University subsequently adopted a campus speech code that prohibited on-campus behavior that "[c]reates an intimidating, hostile, or demeaning environment for educational pursuits" and punished "[a]ny behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin" or other listed

---

109. 505 U.S. 377 (1992).

110. Id. at 389, 395–96. In the Title VII sexual harassment case Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993), parties and amici briefed the question of whether the hostile work environment standard violated the First Amendment. See, e.g., Reply Brief of Petitioner at 10–11, *Harris*, 510 U.S. 17 (No. 92-1168), 1993 WL 632335; Brief for Respondent at 31–33, *Harris*, 510 U.S. 17 (No. 92-1168), 1993 WL 302223. The Court declined to rule on the issue. See Richard H. Fallon, Jr., Sexual Harassment, Content Neutrality, and the First Amendment Dog that Didn't Bark, 1994 Sup. Ct. Rev. 1, 9 ("After *Harris*, however, it is virtually inconceivable that the Supreme Court might hold that the First Amendment forbids the imposition of Title VII liability for a broad category of sexually harassing speech.").

111. See Shiell, supra note 53, at 5 (noting that the debate between "advocates who champion college hate speech codes and critics who oppose them" entered the public sphere between 1989 and 1992, as evidenced by hundreds of articles, newsletters, and reports being published on the matter); see also id. at 3 ("[A] nationwide push for campus hate speech regulations began in 1987, when leading American institutions like Stanford University and the University of Michigan adopted hate speech regulations as part of a response to growing problems of bigotry and prejudice on their campuses.").

112. See Strossen, supra note 106 at 488–89 (detailing the increase in hate speech on university campuses throughout the 1980s and discussing the First Amendment implications of campus speech codes). For a broader discussion of the regulation of racist speech on campus during this time, see generally Lawrence, supra note 106; Strossen, supra note 106.

113. 721 F. Supp. 852 (E.D. Mich. 1989).

114. Id. at 854.

identities.[115] An interpretive guide listed prohibited activities such as commenting in a derogatory way about a person's physical appearance or sexual orientation, sponsoring a comedian that makes ethnic slurs, or displaying Confederate flags.[116]

The policy was challenged by "John Doe," a psychology graduate student represented by the ACLU, who claimed that he feared that his classroom "discussion of controversial theories of biologically based racial and sexual difference might be sanctionable under the policy."[117] While lauding the inclusionary goals of the policy, the district court struck down the speech code as overbroad and vague.[118] It was overbroad for subjecting students to hearings and other disciplinary processes for activities such as: expressing the belief that "homosexuality was a disease," reading a "homophobic limerick" in class, and expressing the view in a small section discussion that minority students in a particular dentistry course were not treated fairly.[119] The court deemed the policy unconstitutionally vague for a range of reasons, including that it prohibited actions that "'stigmatize' or 'victimize' an individual."[120] *Doe* was followed by a series of other court decisions striking down campus speech codes. As one scholar summarizes this period: "Every campus . . . hate speech code that has been challenged on First Amendment grounds in a court has been ruled unconstitutional."[121]

This seeming triumph of free expression values over equity and inclusion led to some critiques by academics. Professor Charles Lawrence, for instance, contended that the emphasis on free expression values often minimized the harms of racist speech and the importance of education in advancing equal citizenship as required by *Brown v. Board of Education*.[122] And writing many years later about the 1980s/1990s debates over campus speech codes, Professor Jamal Greene made the additional point that the striking down of campus speech codes fetishized free speech rights at the expense of other values and purposes of universities, such as preparing students for democratic citizenship.[123]

---

115. Id. at 856 (quoting the University of Michigan's policy).

116. Id. at 857–58.

117. Shiell, supra note 53, at 73.

118. *Doe*, 721 F. Supp. at 863–68.

119. Id. at 865–66.

120. Id. at 866–67 (internal quotation marks omitted).

121. Shiell, supra note 53, at 87.

122. See Lawrence, supra note 106, at 457 (arguing for carefully drafted regulations against campus hate speech and contending "that many civil libertarians who urge that the first amendment prohibits any regulation of racist speech have given inadequate attention to the testimony of individuals who have experienced injury from such speech").

123. See Jamal Greene, How Rights Went Wrong: Why Our Obsession With Rights Is Tearing America Apart 240–41 (2021) ("The purpose of a university is not to provide a forum for free speech. It is to prepare students for democratic citizenship."); see also Ronald J. Daniels with Grant Shreve & Phillip Spector, What Universities Owe Democracy 69–97 (2021) (describing the role of universities in educating democratic citizens).

Doe and other court decisions during that period introduced First Amendment constraints that powerfully shaped campus harassment policies, at least until the recent crises ushered in bolder uses of Title VI. In response to these judicial rulings, schools that maintained campus speech codes redrafted them to track the hostile environment standard developed in antidiscrimination law.[124] Specifically, the new policies constrained only speech meeting the *Davis* requirement that harassing speech be severe, pervasive, and so offensive that it objectively and subjectively interferes with access to education.[125] The prevailing, though not unanimous,[126] legal commentary understood this hostile environment standard, with its severity and objectivity threshold, to be permissible under the First Amendment.[127]

B. *Round Two: Title VI and Free Speech*

One could view the introduction of the Title VI hostile educational environment standard in response to the debate over campus codes as settling the debates over free expression and antidiscrimination that attend the current campus crises. But it has not. To start, the adoption of the hostile environment standard only resolves the conflict between harassment law and the First Amendment at a high level of generality. What is "severe," "pervasive," and objectively offensive will depend on the context, and there will be variation in the application of this standard by university administrators, courts, and administrative actors. While the hostile environment standard has generally been understood to be a high standard in courts,[128] university administrators may feel external or internal pressure to discipline or limit student speech on a lower standard

---

124. See Shiell, supra note 53, at 142 (noting that "courts have upheld some university restrictions on speech based in hostile environment law").

125. See id. (describing the hostile environment harassment approach as the "most frequently used[] basis for regulating campus hate speech").

126. See id. at 95 (introducing debates over whether Title VII's hostile environment standard is constitutional or can be constitutionally applied to college campuses). For a broader discussion of whether harassment law is consistent with the First Amendment, see generally Eugene Volokh, Comment, Freedom of Speech and Workplace Harassment, 39 UCLA L. Rev. 1791 (1992); Eugene Volokh, No, It's Not Constitutional for the University of Oklahoma to Expel Students for Racist Speech [Updated in Light of the Students' Expulsion], Wash. Post: Volokh Conspiracy (Mar. 10, 2015), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/03/10/no-a-public-university-may-not-expel-students-for-racist-speech/ (on file with the *Columbia Law Review*) [hereinafter Volokh, Oklahoma Students Expelled].

127. See, e.g., Kent Greenawalt, Fighting Words: Individuals, Communities, and Liberties of Speech 96–98 (1995) (offering a modest endorsement of the hostile environment standard for campus speech codes); Fallon, supra note 110, at 46–47, 53 (finding the *Meritor* standard consistent with First Amendment principles and arguing that the "'hostile environment' standards developed under Title VII could . . . be extended to campus settings under Title IX without damage to academic freedom" at least "in cases involving 'inherently sexual' harassment"); McClellan, supra note 53, at 4–5.

128. See supra text accompanying notes 54–61.

of offense or severity, or may vary their application based on an administrator's perception of offensiveness or harm.[129] Add to this general point the specific epistemic debate over whether certain chants and phrases adopted in the context of campus protest are in fact antisemitic.[130]

Second, First Amendment questions will be easiest when allegations involve slurs, epithets, and insults that arguably receive lower constitutional protection, but how to apply the standard when the claimed harassing speech expresses political viewpoints or occurs in the context of a classroom discussion of a political issue is less clear. This latter category generally receives the highest level of First Amendment protection because it furthers the democratic self-governance goals of the First Amendment.[131]

The lack of a precise articulation in the doctrine and commentary of the free speech limits on the application of Title VI became clear after the protests following October 7, 2023. In issuing administrative guidance following the 2023 to 2024 protests, the Department of Education's OCR did not clarify the free expression questions. Rather, it simply stated the need to adhere to the First Amendment at a high level of generality. For instance, the Biden Administration's May 7, 2024, guidance stated that "[n]othing in Title VI or regulations implementing it requires or authorizes a school to restrict any rights otherwise protected by the First Amendment to the U.S. Constitution" and that "OCR enforces the laws within [its] jurisdiction consistent with the First Amendment."[132] And yet the guidance did not explain with specificity how the First Amendment would be applied to discriminatory speech or shape enforcement. As discussed below, some of what is included in guidance and enforcement activity is also inconsistent with what some scholars have argued is required by the First Amendment.[133]

---

129. See Shiell, supra note 53, at 145 ("[T]he hostile environment standard has not been defined with sufficient and defensible precision to provide people with fair notice. . . . The difficulties inherent in defining 'words that wound' should persuade us to tread slowly [with speech codes].").

130. See Alex Gourevitch, The Right to Be Hostile, Bos. Rev. (July 22, 2025), https://www.bostonreview.net/articles/the-right-to-be-hostile/ (on file with the *Columbia Law Review*) ("[Protests] are a particular *kind* of political expression: public expressions of hostility toward political views and often the people who hold them. If applied to speech in the context of protest, the hostile environment standard . . . would make protest impossible."); see also infra Part III; supra note 31.

131. But cf. Genevieve Lakier, The Invention of Low-Value Speech, 128 Harv. L. Rev. 2166, 2168 (2015) (arguing that the distinction between high- and low-value speech is an "invented tradition" in Supreme Court jurisprudence dating to the period of the New Deal (internal quotation marks omitted)).

132. 2024 Guidance, supra note 7, at 2.

133. See, e.g., University of California Letter, supra note 42, at 28, 31 (detailing concerns that University of California campuses failed to investigate whether speech protected by the First Amendment "nonetheless created a hostile environment for affected students").

The lack of a clear legal framework on *how* to apply Title VI to post–October 7, 2023, campus protests and disruptions in a manner consistent with the First Amendment has inspired a new round of academic commentary. Most of these recent commentators would agree that racial or ancestry-based epithets directed at specific students can be prohibited and the subject of discipline consistent with the First Amendment. Such epithets are either "conduct" consistent with the Justice Scalia analysis in *R.A.V.* or the government has a compelling interest in regulating this type of "grossly offensive" speech.[134] Moreover, quite apart from Title VI harassment law, some of what occurred on campuses in the spring of 2024 could be regulated consistent with time, place, and manner doctrine.[135] Professor David E. Bernstein and practitioner David L. Bernstein contend, for instance, that actions such as taking over a building, assault and battery, trapping students in classrooms, blocking entrances, or placing graffiti on campus property are either not protected speech (because they are conduct) or can be prohibited under content-neutral rules against physical violence or property harm.[136]

Another question is whether colleges can prohibit grossly offensive speech if it is not directed at a specific student but at a generalized audience or administrators. This is directly relevant to campus protests and encampments since many involved chants that did not target specific students or even students at all. Some commentators argue no: Even in the case of protests involving chants that some groups consider offensive, if these chants are not directed at a specific individual then universities cannot prohibit this speech simply based on its content or the viewpoints

---

134. See David E. Bernstein & David L. Bernstein, Supporting Free Speech & Countering Antisemitism on American College Campuses, 11 Harv. J.L. & Pub. Pol'y Per Curiam, 1, 3–5, 13 (2025), https://journals.law.harvard.edu/jlpp/wp-content/uploads/sites/90/2025/06/Bernsteins-Campus-Free-Speech-vf.pdf [https://perma.cc/5FKP-9ZRK] (arguing that much of the protest speech that took place after October 7, 2023, actually involved conduct such as "vandalism; assault and battery; threats, intimidation, and harassment; . . . trespassory encampments; [and] building 'occupations'" or otherwise violated reasonable time, place, and manner restrictions); Eidelson & Hellman, supra note 6, at 14 (arguing that the norm favoring open expression does not extend to protecting "insistent, personal abuse"); Pettys, supra note 59, at 36 ("Disciplining students for speaking in ways that create hostile learning environments for others is a content-based regulation of speech . . . . Imposing such discipline at a public institution of higher education is thus permissible only if it can withstand strict scrutiny.").

135. For more on time, place, and manner restrictions, see, e.g., Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) (holding that state regulations that burden speech but that are content neutral and regulate the "time, place, [and] manner" of speech are subject to a lower level or scrutiny than viewpoint-based restrictions on speech); Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 295 (1984) (holding that an expressive encampment protesting homelessness could be regulated by the federal government's anti-camping rule); Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 513 (1969) (holding that K–12 students retain free speech rights but that they cannot "materially disrupt[]" the educational environment).

136. Bernstein & Bernstein, supra note 134, at 5–13.

it expresses.[137] Reviewing free expression doctrine and ideal norms on university campuses, Professors Benjamin Eidelson and Deborah Hellman justify this position, arguing that the university context requires students to expect and tolerate some offensive speech.[138] The exception they would draw is only for "harassment," which they then define as "conduct" (even if it includes words) that singles out a particular student for "insistent, personal abuse."[139] Writer Alex Gourevitch similarly argues that universities should "protect the right to engage in public, disruptive acts—including those that feature open expressions of hostility to political views—even at the cost of some people feeling discomfort or even intense unease."[140] While recognizing that a university should "protect students from harm and harassment if it is to sustain the social and intellectual life of the community," he argues that self-reported feelings of exclusion are not enough.[141] He would require "some likely and imminent threat of harm, or direct and individualized harassment and intimidation."[142] These arguments that a hostile environment requires speech directed at a particular student, however, are inconsistent with the Department of Education's guidance, which states that the harassment need not be "targeted at a particular person" to violate Title VI—a position that is supported by some case law[143] and that the Department maintains is fully consistent with the First Amendment.[144]

Beyond settling the issue of targeting, the Biden Administration's 2024 guidance did not address or resolve many of the toughest pressing questions of political or academic speech and concentrated instead on incidents involving physical threats; assaults; racial, ancestry, or ethnic name-calling or epithets directed toward individuals; and explicit differential treatment and exclusion from university services.[145] The guidance does acknowledge the complexities of political and academic speech in a section on national origin discrimination, noting that views on

---

137. See id. at 14 ("[W]e share the view of those who contend that even grossly offensive [student] speech that may contribute to a hostile environment falls within the freedom of expression rights of the students that should be respected on college campuses."); see also Volokh, Oklahoma Students Expelled, supra note 126 ("[S]peech doesn't lose its constitutional protection just because it refers to violence.").

138. Eidelson & Hellman, supra note 6, at 13–14.

139. Id. at 14.

140. Gourevitch, supra note 130.

141. Id.

142. Id.

143. See 2024 Guidance, supra note 7, at 4 (discussing Title VII case law that does not directly address First Amendment questions but does not require targeting).

144. See id. at 3–5 (noting that the conduct may be directed at anyone and that "harassment may also be based on association with others of a different race," such as a sibling or parent who is of a different race than "the person being harassed").

145. See, e.g., id. at 16 (describing a scenario in violation of Title VI in which a teacher demands that the only Jewish student in class condemn Israel and write an essay about the topic despite the student voicing her discomfort).

a specific country's policies will not constitute Title VI discrimination: "[A] professor teaching a class on international politics [who] references or criticizes the government of Israel's treatment of non-Jewish people, the nation of Saudi Arabia's response to religious extremism, or the government of India's promotion of Hinduism . . . would not likely implicate Title VI" as long as such comments do not target students based on race, color, or national origin.[146] And it includes a reference to a 1982 district court Title VII case that holds that comments concerning the "Arab–Israeli conflict" and the Israeli prime minister were "political opinions rather than disparagements of Judaism" that would constitute unlawful religious harassment under Title VII.[147] But the guidance notes that Title VI could be implicated if the professor refers to "offensive stereotypes" or engages in differential treatment during an academic or political discussion.[148] It cites words (e.g., terrorist)[149] that, in certain contexts, are used as racial or religious epithets (e.g., Zionists, Zio, pro-Hamas). It also states that "political protest on its own does not typically implicate Title VI" but that it would open an investigation based on "protest signs . . . [that] targeted specific Jewish students using ethnic stereotypes."[150]

These First Amendment concerns associated with Title VI harassment law and regulation might in theory be reconciled through the high standard for proving harassment and the context-specific nature of its application. The Department of Education has long emphasized that its determination of whether a hostile environment exists on a particular campus will depend on the totality of the circumstances.[151] Eidelson and Hellman, who examine the doctrinal questions involved in applying Title VI to antisemitism, argue that the hostile environment test, if applied consistently and with regard for the university context, can operate to safeguard free expression.[152] In particular, they contend that courts and administrators should incorporate the "speech-friendly" baseline that exists in higher education settings.[153] In universities, unlike in elementary and secondary school settings, they argue that, in and around the classroom, students "assume the risk that they will confront . . . almost any of the messages and ideas they might encounter on the street corner."[154] A

146. Id. at 16–17 (footnote omitted).

147. Id. at 16 n.32 (internal quotation marks omitted) (quoting Reichman v. Bureau of Affirmative Action, 536 F. Supp. 1149, 1176 (M.D. Pa. 1982)).

148. Id. at 17.

149. Id. at 7, 13.

150. Id. at 10.

151. Id. at 6.

152. See Eidelson & Hellman, supra note 6, at 13–15 (recognizing that Title VI, in the university context, should facilitate an exchange of a wide range of ideas, even at the cost of some student discomfort).

153. Id.

154. Id. at 14.

reasonable university student should expect to be offended by political expression because it is specially connected to the "organizing purpose of the institution."[155]

C. *Emerging Principles*

In the absence of clear agency guidance, it may be left to courts to sort through how to best balance free expression and Title VI. An instructive approach was taken by a judge in the Southern District of New York in *Gartenberg v. Cooper Union for the Advancement of Science & Art*[156] in evaluating a Title VI claim filed by a group of Jewish students claiming that Cooper Union's administration was deliberately indifferent to harassment by pro-Palestinian demonstrators and other antisemitic acts on campus.[157] The actions included defacement of property, tearing down posters of Israeli hostages, protest chants, and slogans "scrawled in Spanish . . . with lettering that resembled the font used on the front cover of *Mein Kampf*."[158] In one highly publicized incident, a group of demonstrators banged on the doors and floor-to-ceiling windows of a school library and shouted demands to be let in, while a smaller group of students "wearing recognizably Jewish attire" stayed behind the library's locked doors for twenty minutes; these students did not feel safe leaving, and school administrators "did nothing to disperse the protestors and instead directed law enforcement to stand down . . . as the college's president . . . escaped the building through a back exit."[159]

The court held that this type of speech and conduct created a plausible claim of "hostile or abusive . . . discriminatory intimidation, ridicule, and insult sufficiently severe or pervasive to alter the conditions of [the] educational environment" and thus was sufficient to survive a motion to dismiss.[160] But reading Title VI consistent with the First Amendment, the court held that the statute did not reach other speech that took place on campus that it characterized as "pure speech on matters of public concern."[161] For one, according to the court, "speech 'on a

155. Id.

156. 765 F. Supp. 3d 245 (S.D.N.Y. 2025).

157. Complaint at 10–16, *Gartenberg*, 765 F. Supp. 3d 245 (No. 24-cv-2669) (alleging Cooper Union's deliberate indifference to on-campus antisemitism).

158. *Gartenberg*, 765 F. Supp. 3d at 252.

159. Id. at 252–53; see also Sharon Otterman, How a 6-Second Video Turned a Campus Protest Into a National Firestorm, N.Y. Times (Dec. 18, 2023), https://www.nytimes.com/2023/12/18/nyregion/cooper-union-pro-palestinian-protest.html (on file with the *Columbia Law Review*) (describing the Cooper Union episode in more detail).

160. *Gartenberg*, 765 F. Supp. 3d at 270–71, 274 (internal quotation marks omitted) (quoting Papelino v. Albany Coll. of Pharmacy of Union Univ., 633 F.3d 81, 89 (2d Cir. 2011)); see also id. at 271–74 (detailing the library incident and other campus vandalism and harassment directed at Jewish students that plausibly created a hostile environment).

161. Id. at 264 ("[C]ourts have emphasized the need to 'exercise special caution when applying [anti-discrimination law] to matters involving traditionally protected areas of speech.'" (second alteration in original) (quoting Honeyfund.com Inc. v. Governor, 94 F.4th

matter of public concern, directed to the college community'" will generally not meet the high standard for proving hostility or offensiveness required by *Davis*: "[A] reasonable person should understand that speech on matters of public concern, directed to the community at large through generally accepted methods of communication, is very different than targeted, personal harassment aimed at a particular person."[162] The court also construed the "deliberate indifference" standard in light of the First Amendment by holding that a university's failure to censor or punish "political speech directed at the college community" will rarely meet that standard and that academic freedom counsels for judicial deference to a college's decision to on how to discipline students.[163]

A decision by the First Circuit in a Title VI case against MIT holds similarly that the First Amendment "erects safeguards that limit the ability of the government or private plaintiffs to punish MIT for not restricting more severely the student protestors' protected speech."[164] Affirming the trial court's dismissal, the court held that the pro-Palestinian, "anti-Zionist" protesters' chants and signs constituted political speech criticizing Israel and that there was no showing by the plaintiffs that this criticism was motivated by antisemitism.[165] In this decision then, both the high "severe, pervasive and objectively offensive" harassment standard and the First Amendment's protection for political speech operated to limit liability.[166] Future cases may come out differently, but the approach taken by these two courts resonates with the commentary described in section III.B and may be able to guide universities in crafting policies that attend to both free expression and inclusion. First, there is a wide variety of vandalism, graffiti, and protest activity that universities can prohibit using content-neutral rules that do not involve engagement with the Title VI hostile environment standard.[167] Second, universities can, consistent with the First

---

1272, 1282 (11th Cir. 2024))); id. ("[T]he Court concludes that because interpreting Title VI to impose liability for a hostile environment created in part by pure speech on matters of public concern would cast significant doubt on the statute's constitutionality, the Court must adopt a permissible construction of Title VI . . . .").

162. Id. at 265 (quoting Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist., 605 F.3d 703, 710 (9th Cir. 2010)).

163. Id. at 267.

164. StandWithUS Ctr. for Legal Just. v. Mass. Inst. of Tech., 158 F.4th 1, 15 (1st Cir. 2025).

165. See id. at 18 ("[P]laintiffs [do not] allege facts that, if true, would otherwise permit the inference that in these specific circumstances the protestors' strident criticisms of Israel were driven by antisemitism. Without such an inference, the protestors' speech cannot constitute racial harassment for Title VI purposes.").

166. See id. at 11 (internal quotation marks omitted) (quoting M.L. ex rel. D.L. v. Concord Sch. Dist., 86 F.4th 501, 511 (1st Cir. 2023)). The court also found that MIT was not deliberately indifferent as the University took a range of actions, including revising its campus expression rules, forming an initiative against antisemitism, suspending unruly and disruptive protesters, and arresting ten protesters who refused to leave the cleared encampment area. See id. at 22–23.

167. See supra note 135.

Amendment and free expression norms, prohibit harassment targeted at specific individuals or groups of individuals when that harassment rises to the Title VI *Davis* standard.[168] As indicated above, the standard is applied on a case-by-case basis, and there will be disagreement as to how to apply these rules to any specific factual scenario; nonetheless it is a demanding, high standard.[169] Third, as found in *Cooper Union*, universities should exercise caution and may be prohibited by the First Amendment from disciplining students in situations that do not meet the *Davis* standard or that involve political speech.[170]

The result of applying these points of agreement may not fully please anyone. Even under these rules, there will likely be variation among campuses (and perhaps within campuses). Prophylactic rules will sometimes curb legitimate expressive activity, and students will still have to tolerate some offensive, uncomfortable, and unpleasant speech on campuses, including speech that may feel harmful to their identity and make it hard for them to fully participate on campus.[171]

This suggests to us that however the doctrinal debates between free expression and Title VI are settled by courts, they are not going to produce the campus climates to which most students, faculty, administrators, and staff aspire. Most universities would rather sustain campus environments in which their students do not burn books or shout down speakers, and in which students reason with each other, disagree respectfully, attempt to bridge understanding, and are sensitive to their fellow students' backgrounds and identities.[172] And they would rather not have campuses in which students make continual use of the Title VI complaint process to mediate disagreements and offenses.[173] In Part III, this Piece discusses some of the strategies that universities might implement to advance student inclusion, thriving, and community citizenship beyond the narrow legal conception of a hostile environment.

---

168. See supra notes 125–127 and accompanying text.

169. See supra text accompanying notes 55–63.

170. See supra notes 159–163 and accompanying text.

171. See supra note 62 and accompanying text.

172. Cf. Greene, supra note 123, at 243 (describing how universities seek to help "students to develop empathy, to live in a community governed by social norms, and to learn how to *persuade* others through evidence and reason rather than simply to 'own' them").

173. Cf. Eidelson & Hellman, supra note 6, at 13 ("[A]ny trend among students toward greater expectations of protection from offense would automatically be locked in by Title VI: Universities would be obliged to meet these expectations—and most likely to further escalate them in the process—even if they frustrate the university's pedagogical function and academic mission.").

III. COMMUNITY CITIZENSHIP: CHARTING A PATH FORWARD

The discussion thus far suggests that we should be wary of claims casting Title VI as the centerpiece of responses to campus conflicts[174] given the statute's limited reach and its misuse by the current Administration to override the autonomy of higher education institutions. Yet the statute's long history also reminds us of its power and potential when implemented properly.[175] In an effort to achieve more meaningful and enduring improvements to campus climates, this Part resituates Title VI compliance within a broader framework centered on students' citizenship in their college or university communities. Several concluding points on regulation and institutional self-governance also aim to restore the now-skewed relationship between government and higher education institutions and support schools in managing campus conflicts and fulfilling the equal opportunity ambitions of Title VI.

A. *On Relocating Title VI Compliance Into a Community-Citizenship Framework*

The limits of a compliance approach in building a thriving culture, well known in business, are especially vivid in the context of Title VI and campus conflicts.[176] Disciplinary warnings and investigations may chill protected speech and erode an environment designed to foster free inquiry. Add to that the high bar of the hostile environment doctrine, which means that even vigorous compliance will not alleviate the many educational harms students face due to these conflicts. More generally, because conflicts between robust speech and optimal learning are inherent in the process of students engaging with each other on sensitive or contested issues, a compliance-centric approach seems to miss the forest for the trees.

This critique is not intended to suggest compliance is unimportant or to minimize the difficulties these conflicts present under any approach. Israel–Gaza protests after October 7, 2023, have brought new focus to how

---

174. See, e.g., Press Release, U.S. Dep't of Educ., Secretary McMahon Statement on Columbia University Deal (July 23, 2025), https://www.ed.gov/about/news/press-release/secretary-mcmahon-statement-columbia-university-deal [https://perma.cc/Y5LQ-BJM4] ("Columbia's reforms are a roadmap for elite universities that wish to regain the confidence of the American public by renewing their commitment to truth-seeking, merit, and civil debate." (internal quotation marks omitted) (quoting Linda McMahon, U.S. Sec'y of Educ.)).

175. See, e.g., Johnson, Lawyering that Has No Name, supra note 18, at 1298 ("Title VI grows out of a very different strand of civil rights law than Title VII: one that begins in the New Deal and uses executive and agency power to promote nondiscrimination.").

176. "Culture eats strategy for breakfast," a common refrain in business settings, makes the point that even the best plans will falter in implementation if they clash with an organization's culture. Jacob M. Engel, Why Does Culture 'Eat Strategy for Breakfast'?, Forbes (Nov. 20, 2018), https://www.forbes.com/councils/forbescoachescouncil/2018/11/20/why-does-culture-eat-strategy-for-breakfast/ (on file with the *Columbia Law Review*) (last updated Dec. 10, 2021).

sharp these conflicts can be, and other reminders can be found in the fracturing of campuses over student groups in recent years bringing white nationalists and other similarly provocative speakers to campus[177] and using campus quads to host so-called "affirmative action bake sales" that charge different prices based on the race of the customer.[178] But the argument here does mean to suggest that leading a response with Title VI compliance is unlikely to help students interact more effectively across their differences or improve the campus climate.[179]

1. *The Risks of Leading With Title VI Compliance and the Benefits of Community Citizenship.* — A framework focused on community citizenship restores the campus learning environment as the priority and repositions

---

177. See, e.g., Shelby Martin, JMU Organization Hosts 'Controversial' Speaker, Drawing Opposition via Online Petition, WHSV (Apr. 15, 2025), https://www.whsv.com/2025/04/15/jmu-organization-hosts-controversial-speaker-drawing-opposition-via-online-petition/ [https://perma.cc/2F58-H5GY] (describing a speech at James Madison University by Robert Spencer, an anti-Islam author and cofounder of Stop the Islamization of America); Sharon Sullivan, White Supremacist's Talk Draws Backlash at Colorado Mesa University, Colo. Newsline (Mar. 27, 2025), https://coloradonewsline.com/2025/03/27/white-supremacist-backlash-colorado-mesa-university/ (on file with the *Columbia Law Review*) (reporting on a student-led Western Culture Club invitation to a white supremacist speaker); About David Horowitz Freedom Center, David Horowitz Freedom Ctr., https://www.horowitzfreedomcenter.org/about [https://perma.cc/3EUR-2ZJV] (last visited Oct. 26, 2025) (describing national "Islamo-Fascism Awareness Week" activities on 106 college campuses in 2007); A Student's Guide to Hosting Islamo-Fascism Awareness Week, Terrorism Awareness Project, http://media0.terrorismawareness.org/files/Islamo-Fascmism-Awareness-Week-Guide.html (on file with the *Columbia Law Review*) (last visited Sep. 13, 2025) (describing "Islamo-Fascism Awareness Week" plans for college campuses); see also Ben Preston, David Horowitz Provokes Extreme Response With Anti-Arab Remarks, Santa Barbara Indep. (May 15, 2008), https://www.independent.com/2008/05/15/david-horowitz-provokes-extreme-response-anti-arab-remarks/ [https://perma.cc/VMD5-K2T2] (describing Horowitz's remarks, including attacks on the Muslim Student Association, at a college event).

178. See, e.g., Morgan Malouf & Scott R. Stroud, Univ. of Tex. at Austin Moody Coll. of Commc'n, This Bake Sale Got Burnt: Free Speech and the Ethics of Protest 2 (2018), https://mediaengagement.org/wp-content/uploads/2019/02/2-this-bake-sale-got-burnt-case-study.pdf [https://perma.cc/ZUA8-LJVW] ("Many Texas students were furious with the [affirmative action] bake sale, arguing that it was racist."); 'Affirmative Action Bake Sale' at Clemson University Leaves Several Students Upset, WYFF, https://www.wyff4.com/article/clemson-affirmative-action-bake-sale/42743400 [https://perma.cc/67TR-M8NG] (last updated Feb. 2, 2023) (reporting students' feelings of shock and disappointment in response to Turning Point USA's affirmative action bake sale at Clemson University); We Need Reasoned Debate on Affirmative Action, Not Mockery, U. Wash.: Past-Presidential Blog (May 3, 2019), https://www.washington.edu/33rd-president/2019/05/03/we-need-reasoned-debate-on-affirmative-action-not-mockery/ [https://perma.cc/93PR-QQ5U] (commenting that the bake sale does not "create a forum for serious discussion, but instead appears to mock not so much just a policy, but individuals who belong to racial, ethnic and gender groups that have historically been marginalized and that have often experienced very real prejudice, discrimination and oppression").

179. For extended discussion of the problems associated with treating legal compliance and culture separately in workplaces and other organizations, see generally Goldberg, Power and Limits of Law, supra note 63.

compliance in service of that environment. It also includes two additional elements that are likely to have a greater impact on campus life given the limits of Title VI. First, school-sponsored and -supported affirmative community-building efforts are necessary to foster students' ability and commitment to express ideas with vigor and collegiality (or at least reduced interpersonal hostility). Students do not necessarily arrive on campus with this skill set. Second, informal mechanisms for de-escalating and resolving conflicts outside of a disciplinary process are also essential to avoid an all-or-nothing response when conflicts inevitably arise. Shifting away from disciplinary enforcement and compliance as the lead approach to student conflict protects against an additional risk of Title VI becoming the proverbial tail that wags the dog. The spotlight never remains steadfastly on a single issue, no matter how important, but community-citizenship work must continue, even as attention and resources drop off predictably when public attention to campus antisemitism moves on.[180]

Resituating Title VI in this way also illuminates how starkly the current Administration's enforcement project has distorted the relationship between government agencies and higher education institutions. By proposing resolution agreements that specify detailed operational steps schools must take to comply,[181] agencies have, in effect, positioned themselves as shadow campus administrators. But federal agencies are not schools, and they lack the expertise schools have about how to effectively implement policy and practice changes on campus. Still, the Administration's unprecedented federal funding threats and terminations have created an environment in which a growing number of institutions are restructuring their operations in the name of Title VI and agency-driven directives.[182]

Leading with community citizenship rather than compliance reinforces the centrality of schools in identifying which actions will be meaningful in their distinctive cultures. This is particularly important given vast variation among the thousands of colleges and universities in the United States that are covered by Title VI—in size, student population,

---

180. On shifts in the public spotlight, see Anthony Downs, Up and Down With Ecology—The "Issue-Attention Cycle", Pub. Intell., Summer 1972, at 38, 38 (discussing the "systematic 'issue-attention cycle'" in which a problem "suddenly leaps into prominence, remains there for a short time, and then—though still largely unresolved—gradually fades from the center of public attention").

181. See supra text accompanying notes 75–78.

182. See supra text accompanying notes 79–94. The University of Pennsylvania announced the creation of a new center as a focal point for Title VI compliance—even prior to the Trump Administration—after it faced a Title VI lawsuit brought by Jewish students and congressional attacks related to antisemitism. Johanna Alonso, Penn Creates New Title VI Center. Will Other Colleges Follow?, Inside Higher Ed (Sep. 10, 2024), https://www.insidehighered.com/news/students/diversity/2024/09/10/new-penn-title-vi-center-could-signal-trend [https://perma.cc/EZ5X-ZWAZ] (noting that "[b]ecause of the heightened focus on this area of federal law, experts believe other universities may decide to start similar offices as they rethink their approach to Title VI compliance").

location, staffing, governance, research orientation, and culture (including faith-based, honor code–based, social justice oriented, historically Black and other minority-serving institutions, among others).[183] No one-size-fits-all strategy will protect students from discrimination and support a robust speech environment, let alone a thriving campus community.

Most fundamentally, a community-citizenship focus is essential to effective campus operations. Nearly all of the hundreds or thousands of students in the entering class of any college or university are new to the institution and to each other. They come from different places, sometimes from great distances, and bring with them diverse backgrounds, experiences, interests, and goals.[184] For campuses that serve traditional-age undergraduates, most come from a high school setting with closer oversight from responsible adults than they will have in college, and residential students may be living away from parents and caregivers for the first time. All of this leaves colleges and universities with no choice but to acculturate incoming students to their new environments and build up their skills in communicating with each other across differences. Still, even with ideal programming and support, conflict is inevitable, particularly in an environment where large numbers of students hold the view that "speech can be as damaging as physical violence."[185] As a result, conflict-response mechanisms, including but not limited to Title VI disciplinary processes, are also essential for schools.

Responding to these realities, the tripartite community-citizenship framework presented here incorporates affirmative community-building

---

183. See Postsecondary Institutions: How Many Postsecondary Institutions Are Eligible to Award Federal Aid?, Nat'l Ctr. for Educ. Stat.: Integrated Postsecondary Educ. Data Sys., https://nces.ed.gov/ipeds/TrendGenerator/app/answer/1/1 [https://perma.cc/U3BE-C5VD] (last visited Sep. 14, 2025) (noting that 5,686 postsecondary institutions were eligible to award federal student aid in the 2023 to 2024 academic year, although not all of these are colleges or universities). The Carnegie Classification of Institutions of Higher Education, which categorizes nearly four thousand institutions across multiple dimensions, sheds some light on these differences. See Carnegie Classification of Institutions of Higher Education, Am. Council on Educ., https://carnegieclassifications.acenet.edu/ [https://perma.cc/T5R2-EJLT] (last visited Sep. 14, 2025).

184. For a host of insights into new students at the college level, see generally Maria Claudia Soler & Ellen Bara Stolzenberg, Am. Council on Educ., Understanding the Entering Class of 2024: Key Insights From the CIRP Freshman Survey 2024 (2025), https://heri.ucla.edu/wp-content/uploads/2025/02/Understanding-the-Entering-Class-of-2024.pdf [https://perma.cc/7ARW-FPJR] (presenting and analyzing survey responses from more than twenty-four thousand students at fifty-five colleges and universities).

185. Knight Found. & IPSOS, College Student Views on Free Expression and Campus Speech 2024, at 3 (2024), https://knightfoundation.org/wp-content/uploads/2024/07/Knight-Fdn_Free-Expression_2024_072424_FINAL-1.pdf [https://perma.cc/3TYW-JE4Y] (reporting a finding that "7 in 10 students say speech can be as damaging as physical violence" (emphasis omitted)).

and informal conflict-resolution mechanisms alongside Title VI compliance. The following section will elaborate on the first two mechanisms.[186]

2. *Affirmative Community Building*. — Affirmative community-building takes many forms, from teaching a school song to trainings on campus resources, but for issue-oriented conflicts among students, the crucial task is to develop students' communication skills—both listening and speaking—and their sense of belonging to a campus community so they can engage constructively with each other, including in disagreements about identity and politics.[187] Usually initiated at orientation and sometimes continuing in messages from deans and other school leaders that reiterate expectations and institutional values as well as rules, these efforts are more than just a management strategy for a large and sometimes unruly group.[188] When done well, they not only assist in helping students interact in ways that do not unduly fray the social fabric but also feed into the general educational mission. To be sure, successful implementation requires an investment of time and resources during the semester as well as in the flurry of orientation activities. It can be challenging and requires regular feedback and adjustment. But the payoff for the general educational mission is also significant, as students have stronger skills to support their interactions in class, on teams, and in student organizations, each of which has different expectations regarding

186. This discussion relies in part on the experience of one of the authors in founding and leading Columbia University's Office of University Life, which focuses on campus community citizenship.

Parts I and II have already elaborated key aspects of the third element—the Title VI compliance process, including doctrinal boundaries. The discussion in this Part also highlights some ways in which a community-citizenship focus can enhance implementation of a school's compliance obligations. See infra section III.A.

187. Cf. Coll. Pulse & Found. for Individual Rts. & Expression, 2025 College Free Speech Rankings: What Is the State of Free Speech on America's College Campuses? 1–2 (2025), https://5666503.fs1.hubspotusercontent-na2.net/hubfs/5666503/FIRE_CFSR_2025.pdf [https://perma.cc/9BMF-4XJY] (reporting that seventeen percent of students who responded to a multi-campus survey indicated they "feel like they cannot express their opinion on a subject at least a couple of times a week because of how students, a professor, or the administration would respond").

188. Some schools begin this effort before students arrive on campus. See, e.g., Pre-Orientation Training, Colum.: Univ. Life, https://universitylife.columbia.edu/welcome-columbia-pre-orientation-tutorials (on file with the *Columbia Law Review*) (last visited Sep. 15, 2025) (explaining Columbia University's mandatory pre-arrival training, which "conveys values that are foundational to membership in the Columbia University community"). On these efforts more generally, see, e.g., Thalia Beaty, US Universities Launch Partnership to Elevate Free Speech to Counter Threats to Democracy, AP News, https://apnews.com/article/free-speech-on-college-campuses-84ffdc68e191fcfa5185954402fdb677 [https://perma.cc/X4P5-5T23] (last updated Aug. 15, 2023) (describing a new nonprofit initiative across thirteen American universities to "cultivate the freedom of expression on campuses" in response to political division and threats to American democracy).

permissible and constructive speech but all of which contribute to the learning environment.[189]

This is not to suggest that community-building initiatives should strive for perfect harmony among students or dampen disagreement, though these initiatives will, ideally, aid in reducing the number of disagreements that escalate into conflicts requiring external assistance with de-escalation. Their purpose, instead, is to help students recognize themselves within a broader community and understand how their actions and communications can contribute to and otherwise affect those around them.[190]

---

189. See, e.g., Mary Aviles, Mylien T. Duong, Erik Gross, Katrina Hall & Désirée Jones-Smith, Aspen Inst. & Constructive Dialogue Initiative, Transforming Conflict on College Campuses 39, 42 (2023), https://www.wisconsin.edu/civil-dialogue/download/Transforming-Conflict-on-College-Campuses.Aspen-Institute-Article.pdf [https://perma.cc/3XNM-SCBP] (explaining the pedagogical and developmental importance of building skills in talking, listening, and organizing in both formal and informal scenarios on college campuses); Sara Drury, Allison Briscoe-Smith, Nicholas V. Longo, Lisa-Marie Napoli, Rachel Winslow, Matt Farley & Laura Weaver, Campus Compact, Better Discourse: A Guide for Bridging Campus Divides in Challenging Times 1 (2024), https://compact.org/resources/better-discourse-a-guide-for-bridging-campus-divides-in-challenging-times#full [https://perma.cc/C8LD-47TM] (providing a toolkit for facilitating "[r]espectful, informed, and purposeful conversation across lines of difference" on college campuses); Julie J. Park & Jonathan Feingold, Campaign for Coll. Opportunity, How Universities Can Build and Sustain Welcoming and Equitable Campus Environments 3–4 (2024), https://collegecampaign.org/wp-content/uploads/2024/10/2024_WelcomingCampuses_FINAL_web.pdf [https://perma.cc/VS7P-A49T] (advocating for colleges and universities to strive to create equitable learning environments in which students of all identities are included in the college community and feel safe, respected, and valued on campus).

Institutional support for faculty in their teaching, including best practices and other resources to enhance classroom conversations on contentious issues, is another essential element in serving the twin educational aims of robust debate and full participation. Although full exploration is beyond the scope of this Piece, the role of faculty is also crucial in modeling ways to disagree about ideas while staying in conversation. See, e.g., New Inclusive Pedagogy Website Helps Educators Create a More Welcoming Classroom Environment, U. Chi.: Off. Provost Diversity & Inclusion (Nov. 23, 2020), https://diversityandinclusion.uchicago.edu/news/article/new-inclusive-pedagogy-website-helps-educators-create-a-more-welcoming-classroom-environment/ [https://perma.cc/8YX2-Z7UZ].

190. Columbia University, for example, requires all students to participate in a Community Citizenship Initiative in their first semester after joining the campus community. See About the Initiative, Colum.: Univ. Life, https://universitylife.columbia.edu/about-the-initiative (on file with the *Columbia Law Review*) (last visited Sep. 13, 2025) ("Sustaining a campus culture that is informed by the values of inclusion and belonging is everyone's responsibility and helps to create an environment where students of all backgrounds can succeed.").

Jacob Gersen and Jeannie Suk Gersen have raised concerns about the creation of a Title VI "bureaucracy" on campuses as a response to antisemitism and Islamophobia. Gersen & Suk Gersen, Six Bureaucracy, supra note 46, at 19–21. They build on their earlier argument that an overreaching "sex bureaucracy" had emerged in higher education to regulate "sex, not merely sexual violence or harassment," partly in response to federal enforcement of Title IX in relation to sexual violence. Jacob Gersen & Jeannie Suk, The Sex Bureaucracy, 104 Calif. L. Rev. 881, 883–85 (2016); cf. Suzanne B. Goldberg, Is There Really a Sex Bureaucracy?, 7 Calif. L. Rev. Online 107, 108–09 (2016),

Building on the discussion above, one might describe affirmative community-building efforts as engaging with, rather than trying to override, the baked-in tensions between free expression and a robust learning environment. In contrast, while students also should learn about the formal complaint process, foregrounding disciplinary information and warnings ahead of the skills and values just discussed conveys a very different and less constructive message.[191]

3. *Informal Conflict Resolution.* — The types of issue-oriented conflicts involving speech related to race or national origin, including shared ancestry, vary tremendously. Included in this wide range are individualized verbal confrontations; friction over flags, posters, and messages on dorm room walls and whiteboards; discord related to laptop stickers and sidewalk chalking; gatherings and protests on or near campus buildings; comments in class; and more.[192] A school without informal resolution options would leave itself with a troubling gap—either sweep a conflict into a Title VI disciplinary process or leave it unaddressed, even if neither of those is a good fit. Informal conflict-management capacity is thus another crucial pillar of a community-citizenship framework.

A full exploration of alternatives to formal disciplinary processes exceeds the scope of this Piece, but some brief descriptions may be helpful. First are the student affairs staff who assist students with conflict

---

https://static1.squarespace.com/static/640d6616cc8bbb354ff6ba65/t/643a0a17e8e5697b8f3c39b1/1681525271909/107-121Goldberg-Final-Online.pdf [https://perma.cc/55M4-H67Q] (suggesting modifications to some aspects of the sex-bureaucracy claim). This Piece's authors share the concern about the overuse of Title VI to address campus conflicts related to antisemitism and anti-Muslim sentiment, though we offer a more optimistic view of community-citizenship efforts that are informed—but not limited—by Title VI.

191. For this reason, in the context of Title IX and concerns about sexual assault on campus, Columbia revised its approach to educating students by leading with a focus on sexual respect, defined as "a commitment to communicating and acting with integrity and respect for others." Sexual Respect, Colum. U.: Sexual Respect, https://sexualrespect.columbia.edu/ (on file with the *Columbia Law Review*) (last visited Sep. 13, 2025). The University's Community Citizenship Initiative, also discussed supra note 188, is described as "an opportunity for students to learn and better understand their part in upholding Columbia's core values of sexual respect and inclusion and belonging." Community Citizenship Initiative, Colum. L. Sch., https://www.law.columbia.edu/community-life/student-life/wellness-and-support/community-citizenship-initiative [https://perma.cc/6SSP-XATQ] (last visited Sep. 15, 2025). For more on the origins of the Sexual Respect and Community Citizenship Initiative, see Suzanne Goldberg, Guest Blog: Office of University Life on Respect and Community Citizenship Initiative, Colum. Daily Spectator (Feb. 12, 2015), https://www.columbiaspectator.com/spectrum/2015/02/11/sexual-respect-and-community-citizenship-initiative-back-story/ [https://perma.cc/5EMN-6B8B]; Suzanne B. Goldberg, Introducing the 2015–16 Sexual Respect and Community Citizenship Initiative, Colum. Daily Spectator (Oct. 21, 2015), https://www.columbiaspectator.com/spectrum/2015/10/21/introducing-2015-16-sexual-respect-and-community-citizenship-initiative/ [https://perma.cc/TU3R-ZJD2].

192. See, e.g., Racism on Campus: Stories From *New York Times* Readers, N.Y. Times (Nov. 17, 2015), https://www.nytimes.com/2015/11/18/us/racism-on-campus-stories-from-new-york-times-readers.html (on file with the *Columbia Law Review*).

de-escalation across a variety of issues, from dorm room cleanliness to freighted disputes involving identity-related speech, on the understanding that any type of conflict may disrupt a student's learning and well-being.[193] In some settings, students themselves provide a structure for conflict de-escalation through peer-to-peer problem-solving including through their own ombuds or other services.[194]

For conflicts that require something more structured, mediation or restorative practices bring students together in a supervised process to address an incident and identify steps for accountability and a path forward.[195] The point of these mechanisms, like informal de-escalation strategies, is not to end vigorous debate but instead to help students understand the way their expressive or behavioral choices may affect others in their community.[196] Fundamental to both mediation and restorative practices is that students participate only if they consent.[197] Like other strategies, these will be the right fit for some but not all conflicts.

In addition, formal complaints that involve campus rules violations can sometimes be resolved informally through a faculty- or staff-led discussion with the accused student, particularly when the alleged violation does not involve acts targeted at another student. When a student has violated a disciplinary rule against shouting down a speaker, for example, informal resolution in an education-oriented session with a campus administrator may help that student understand how their speech

---

193. See, e.g., Phoebe Morgan, Heather Foster & Brian Ayres, Interpersonal Conflict and Academic Success: A Campus Survey With Practical Applications for Academic Ombuds, J. Int'l Ombudsman Ass'n, 2019, at 1, 11, 13 (describing the work of student affairs staff in helping students resolve conflicts with peers); Helen Birk, How to Resolve & Manage Conflict at Universities: 6 Strategies, Pollack Peacebuilding Sys. (Aug. 30, 2024), https://pollackpeacebuilding.com/blog/resolve-conflict-at-universities/ [https://perma.cc/8SWQ-PAPR] (last updated May 9, 2025) (describing the challenges created by conflicts on campuses and offering a variety of conflict-resolution approaches).

194. See Student Conflict Resolution Center, N.Y.U., https://www.nyu.edu/about/leadership-university-administration/office-of-the-president/university-life/office-of-studentaffairs/dean-of-students/dos-support/Student-Conflict-Resolution-Center.html (on file with the *Columbia Law Review*) (last visited Jan. 6, 2025) (offering a conflict-resolution program with trained student mediators).

195. For an extended discussion and multiple examples, see generally Restorative Justice on the College Campus: Promoting Student Growth and Responsibility, and Reawakening the Spirit of Campus Community (David R. Karp & Thom Allena eds., 2004) [hereinafter Restorative Justice on the College Campus].

196. See William C. Warters, Applications of Mediation in the Campus Community, *in* Restorative Justice on the College Campus, supra note 195, at 77, 84; see also Madison Orcutt, Patricia M. Petrowski, David R. Karp & Jordan Draper, Restorative Justice Approaches to the Informal Resolution of Student Sexual Misconduct, 45 J. Coll. & Univ. L. 204, 209 (2020) ("The goal is for the participants to share their experience of what happened; understand the harm caused; and reach consensus on how to repair the harm, prevent its reoccurrence, and/or ensure safe communities.").

197. Orcutt et al., supra note 196, at 213 (setting out the elements of readiness for participation in informal resolution, including "assurance that the parties are participating voluntarily").

affected others in the community and why the institution prohibits certain modes of speech, without the defensiveness that usually surfaces when students are the accused in a disciplinary process and facing potential sanctions.[198]

None of these approaches are unique to higher education settings, of course, but they are a particularly good fit given the commitment of colleges and universities to student learning and the development of critical thinking skills in and outside of the classroom. The fact that participation in informal resolution processes is typically voluntary also may relieve some concerns about students being improperly coerced to change their views.[199] On the other hand, even the most careful nonpunitive mechanisms may have some undesirable chilling or even moderating effect, and, as with any process, these can be misdirected to discourage students from expressing their views or seeking help to stop harassing speech.[200] But these risks also accompany campus disciplinary

198. See generally Aviles et al., supra note 189 (suggesting several informal resolution strategies that would foster more constructive dialogue on college campuses). One of this Piece's authors has direct experience in informally resolving conflicts under campus protest rules and found that a nonadversarial, informal resolution process may, in appropriate circumstances, offer greater opportunities for learning than a formal disciplinary process that brings with it the possibility of institutional sanctions. See Khadija Hussain, Columbia Drops Investigations of Protesters Accused of Disrupting CUCR Event, Colum. Spectator (Nov. 2, 2017), https://www.columbiaspectator.com/news/2017/11/02/columbia-drops-investigations-of-protesters-accused-of-disrupting-cucr-event/ [https://perma.cc/TW7C-GAQE] (describing the informal resolution of complaints related to student protests against a white supremacist speaker); see also Suzanne B. Goldberg, A Conversation About the Rules of University Conduct and Invited Speakers on Campus, Colum.: Univ. Life (Jan. 16, 2018), https://universitylife.columbia.edu/conversation-about-rules-university-conduct (on file with the *Columbia Law Review*) (describing investigation meetings as "educational and as a chance to talk about where the Rules come from and why we have them as well as to talk about what happened at the event").

199. Cf. Aviles et al., supra note 189, at 28 (noting the power dynamic in disciplinary proceedings and the associated risk that disciplined students may feel subject to "victimization or abuse and may not be willing to engage in dialogue").

200. These and related concerns have been much discussed in the context of the informal resolution of Title IX complaints. See, e.g., Margo Kaplan, Restorative Justice and Campus Sexual Misconduct, 89 Temp. L. Rev. 701, 732, 736–37 (2017) (discussing concerns, including students' limited understanding of the consequences of proceedings absent a right to an attorney, acceptance of responsibility induced not by genuine remorse but by the prospect of a settlement precluding criminal charges, and problems associated with power imbalances between universities and students). Campus bias-response policies and processes have also been challenged as having an impermissible chilling effect on student speech, and federal courts of appeals have reached a variety of conclusions. See Speech First, Inc. v. Sands, 144 S. Ct. 675, 676–78 (2024) (Thomas, J., dissenting from the decision to grant certiorari, vacate the decision below, and remand with instructions to dismiss the claims) (discussing cases and noting the plaintiff organization's contention that campus "bias-reporting schemes" may raise First Amendment concerns, including "potential[] pressure[]" on students "to avoid controversial speech to escape their universities' scrutiny and condemnation").

processes, which may be over- or underutilized in ways that diminish speech or antidiscrimination protections.[201]

B. *A Regulatory and Institutional Self-Governance Approach to Limiting Agency Overreach and Maximizing Expertise*

This section argues that it is still possible for Title VI to stimulate government and institutional action to achieve equality and nondiscrimination in the higher education context, drawing from experimentalist insights into the benefits of allocating responsibility for oversight and innovation based on key participants' knowledge and expertise.[202] This is not a near-future argument as there is no evidence the current Administration intends to alter its approach. But under an administration committed to following the law, the two points on regulation and three on institutional self-governance set out below aim to show that extant regulations could reorient agencies away from their invasive overreach into schools' operations and spur schools to innovate in response to racial and other harassment that does not meet the Title VI bar.

First, Title VI regulations as well as statutory language already structure the interaction between government agencies and schools in ways that bring their respective expertise to bear in achieving Title VI's goals. These provisions as implemented prior to the second Trump

---

201. In the Title IX context, see, e.g., Jeannie Suk Gersen, Laura Kipnis's Endless Trial by Title IX, New Yorker (Sep. 20, 2017), https://www.newyorker.com/news/news-desk/laura-kipniss-endless-trial-by-title-ix (on file with the *Columbia Law Review*) (raising concerns about how Title IX enforcement may chill speech and suppress academic freedom).

One also should not be naïve about the social pressure students use to shut down other students' speech that they find disagreeable or offensive, including in ways that are more impactful than formal institutional responses. See Naughton, supra note 107, at 3 (reporting that at least half of surveyed students "have stopped themselves from sharing an idea or opinion in class . . . since beginning college," including many who "thought their words might be considered offensive to their peers"); see also Collin Binkley, As a New Generation Rises, Tension Between Free Speech and Inclusivity on College Campuses Simmers, AP News, https://apnews.com/article/campus-free-speech-young-generation-tension-b931b0dd41aacaac5c50710de9549b09 [https://perma.cc/B68C-EUNJ] (last updated Jan. 13, 2024); cf. Ashley P. Finley & Hans-Jörg Tiede, Am. Ass'n of Colls. & Univs., Academic Freedom and Civil Discourse in Higher Education: A National Study of Faculty Attitudes and Perceptions 12, 16, 23 (2025), https://dgmg81phhvh63.cloudfront.net/content/user-photos/AACU_AcademicFreedomReport_010825_PUBLISHED.pdf [https://perma.cc/Q5DQ-H88Q] (reporting on a study administered between December 2023 and February 2024 in which faculty reported that their colleagues were "more careful to avoid controversial topics" than in the past and less willing to express what "they believe . . . to be correct statements about the world").

202. See generally Charles F. Sabel & William H. Simon, Contextualizing Regimes: Institutionalization as a Response to the Limits of Interpretation and Policy Engineering, 110 Mich. L. Rev. 1265 (2012) (discussing regulatory regimes that support government in problem-solving through coordinating engagement with various stakeholders to address public problems).

Administration meant that government agencies conducted investigations, analyzed evidence, and monitored schools' compliance with resolution agreements, consistent with the expertise of agency lawyers and other specialists. But the government negotiated the terms of those agreements with input from schools, which have expertise in how to effect change within their campus cultures and operating systems. Under this allocation, it would have been unimaginable for agencies to demand that campuses hire more law enforcement or restructure an academic department—or pressure a university president to resign.[203] These interventions involve managing a school's internal operations in ways that stray implausibly far from agency expertise, setting aside questions about agencies' legal authority to even make such demands.[204] Further, excessive operational intervention by agencies is likely to disincentivize schools from innovating to achieve compliance goals and improve campus climate consistent with Title VI equality aims.[205] If agencies tell colleges and universities how to manage their operations to comply with Title VI, why would a school try something different even if it might be more effective?

Second, the federal government, through its singular relationship with every federally funded school in the country, has unique access to practical expertise that it can leverage to support rather than displace schools in eradicating discrimination and advancing equal opportunity consistent with Title VI.[206] This, too, is a point dependent on a future in which the Trump Administration's devastating cuts of federal employees

---

203. See Michael S. Schmidt & Michael C. Bender, Trump Justice Dept. Pressuring University of Virginia President to Resign, N.Y. Times (June 26, 2025), https://www.nytimes.com/2025/06/26/us/politics/university-of-virginia-president-trump.html (on file with the *Columbia Law Review*); supra notes 39, 91.

204. See supra note 203.

205. Cf. Cary Coglianese & David Lazer, Management-Based Regulation: Prescribing Private Management to Achieve Public Goals, 37 Law & Soc'y Rev. 691, 693–94 (2003) (conducting case studies in the areas of food safety, industrial safety, and environmental protection to support an account of "management-based regulation" that directs regulated entities to engage in a planning process to achieve public goals); id. at 695–96 (arguing that, by allowing stakeholders to develop solutions, management-based regulation may promote better compliance with government rules as well as innovative solutions). In keeping with this idea, the Department's 2024 Title IX rule included a provision requiring schools' Title IX coordinators to monitor for barriers to reporting incidents. See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474, 33,564–65 (Apr. 29, 2024), invalidated by, Tennessee v. Cardona, 762 F. Supp. 3d 615 (E.D. Ky. 2025).

206. Although many institutions belong to larger associations of similar institutions, none has the all-encompassing reach of the Department of Education. See, e.g., About the American Council on Education, Am. Council on Educ., https://www.acenet.edu/About/Pages/default.aspx [https://perma.cc/EH9D-MP86] (last visited Sep. 12, 2025) (describing the Council's nearly 1,600 college and university members).

For a theoretical foundation to support government's role in coordinating problem-solving by incorporating input from regulated entities, see generally Sabel & Simon, supra note 202 (discussing regulatory regimes, referred to as "contextualizing regimes," that structure engagement by various stakeholders to address public problems).

have been redressed and its misapplications of the law have been corrected.[207] In that future, a restored Department of Education could serve again as a central hub for identifying and publicizing promising institutional practices from across the United States that schools can choose to test and modify for use in their own environments.[208] The Department's affirmative work in assisting colleges and universities with civil rights compliance has traditionally been more limited, owing to numerous demands on OCR staff for enforcement and other priority efforts as well as concerns that a sample policy or procedure might be misunderstood by schools as either required or sufficient for compliance in their particular setting.[209] Still, Congress, in its 2022 amendments to the Violence Against Women Act, nudged this institutional-education effort along with a provision requiring the Department to partner with the Departments of Justice and Health and Human Services to collect and share these kinds of practical resources from colleges and universities regarding sexual violence on campuses and Title IX compliance.[210] No similar effort has been made for Title VI. Whether by statute, regulation, or practice, a different administration with appropriate staffing and

---

207. See Laura Meckler, Under Trump, the Education Dept. Has Flipped Its Civil Rights Mission, Wash. Post (Aug. 18, 2025), https://www.washingtonpost.com/education/2025/08/18/trump-education-department-civil-rights/ (on file with the *Columbia Law Review*) (discussing the effects of the Trump Administration's mass terminations of OCR staff).

208. The Department has long maintained a clearinghouse of evidence-based resources on a variety of topics. What Works Clearinghouse, Inst. Educ. Scis., https://ies.ed.gov/ncee/wwc/ [https://perma.cc/FPQ6-LNF8] (last visited Sep. 12, 2025).

209. See, e.g, Off. for C.R., 2024 Annual Report, supra note 41, at 5 (noting that, in FY 2024, OCR received 22,687 complaints but only undertook twelve affirmative compliance reviews). OCR resources regularly include language specifying that its interpretations or examples are not legal obligations. See, e.g., Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11,448, 11,448 (Mar. 10, 1994) (emphasizing that the document serves only as an overview of how OCR investigates cases based on "current legal standards"); 2024 Guidance, supra note 7, at 1 ("The contents of this guidance do not have the force and effect of law and do not bind the public or create new legal standards."). For an OCR resource providing sample policy language, see Off. for C.R., U.S. Dep't of Educ., Questions and Answers on the Title IX Regulations on Sexual Harassment app. (2022), https://howard.edu/sites/home.howard.edu/files/2022-11/202107-qa-titleix.pdf [https://perma.cc/888M-2EPP]. Note that the link provided is to a nongovernmental source because the second Trump Administration deleted this resource instead of archiving it online consistent with the Department's historical practice.

210. Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, div. W, § 1314, 136 Stat. 840, 936. In 2024, the Task Force on Sexual Violence in Education issued recommendations relying on input from schools and other stakeholders. Task Force on Sexual Violence in Educ., Recommendations for Educational Institutions on Preventing and Responding to Sexual and Dating Violence: Issued by the Task Force on Sexual Violence in Education (2024), https://www.ed.gov/media/document/recommendations-educational-institutions-preventing-and-responding-sexual-and-dating-violence-108413.pdf [https://perma.cc/82L4-VHYT].

resources could have a tremendous opportunity to build on and advance this work.

The next three points turn to institutional self-governance as means of spurring schools to fulfill the promise of Title VI and not just the bare doctrinal minimum. For one, as set out above, the affirmative community-building work to support community citizenship, including initial acculturation and ongoing skills-building, is best understood as a necessary "soft law" component of an institution's work and should be resourced accordingly. Programs and tools of various sorts are regularly being developed, tested, and adapted to different types of campus environments, and many institutions are already using the changed landscape as a prompt to refresh existing programs and add new ones.[211] Under a community-citizenship framework, this work is no more optional than compliance with Title VI. Recognizing that students, as well as faculty and staff, will have different levels of interest in—or skepticism toward—these efforts, institutions also bear responsibility for identifying a range of strategies to meet community members where they are and adapt those strategies for effectiveness over time.

Further, colleges and universities should explain to their students not only what the rules are but *why* campus rules restrict—or don't restrict—harmful speech related to ideas or identity and *how* those restrictions relate to institutional values. In other words, the disciplinary-rules explanation should come within a community-citizenship frame. Providing an explanation honors a core academic commitment to reason-giving as a foundation for learning and, more importantly here, doing so in the context of community citizenship enables the school to show that it seeks

---

211. See, e.g., Constructive Dialogue Inst., https://constructivedialogue.org [https://perma.cc/CA5R-WMN9] (last visited Sep. 12, 2025) (providing resources and programs for higher education institutions to promote communication across differences with an eye toward culture-building). Individual institutions across the country have also developed a range of "dialogue across difference" initiatives. E.g., Dialogue Across Differences, Am. U. https://www.american.edu/inclusive-excellence/dialogue-across-differences.cfm [https://perma.cc/96XH-TR4B] (last visited Sep. 12, 2025); Dialogue Across Difference, Colum. U.: Off. Provost, https://provost.columbia.edu/content/dialogue-across-difference [https://perma.cc/3XEF-KUTR] (last visited Sep. 12, 2025); Dialogue Across Difference, Rutgers–New Brunswick, https://newbrunswick.rutgers.edu/caring-for-our-community/dialogue-across-difference [https://perma.cc/MV7T-L5UQ] (last visited Sep. 12, 2025); see also Olivia Hall, Interfaith America Funds Cornell Initiatives to Promote Dialogue Across Campus, Corn. Chron. (June 30, 2025), https://news.cornell.edu/stories/2025/06/interfaith-america-funds-cornell-initiatives-promote-dialogue-across-campus [https://perma.cc/N68G-LMD6]; How Stanford is Advancing Constructive Dialogue, Stan. Rep. (June 6, 2025), https://news.stanford.edu/stories/2025/06/constructive-dialogue-civic-discourse-initiatives [https://perma.cc/4RHP-2PUL]. See generally Barbara R. Snyder, The Fall Semester Is Here—But Preparations Have Been Underway for Months, Ass'n Am. Univs.: Barbara's Blog (Oct. 3, 2024), https://www.aau.edu/newsroom/barbaras-blog/fall-semester-here-preparations-have-been-underway-months [https://perma.cc/T3MB-JKHR] (discussing strategies various universities have employed to promote respectful dialogue on campus).

to offer a learning environment consistent with Title VI's equal-opportunity aspirations rather than one limited to the disciplinary boundaries of Title VI.[212]

Finally, while campus disciplinary processes inevitably generate anxiety for students involved in them and criticism from those who disagree with their outcomes or even their use, confusing or complicated institutional communications about policies and procedures can exacerbate these challenges. In this, there is much to be learned from the Title IX context in which legalistic policies confused students on both sides of cases, leading many observers to express doubts about fairness, regardless of outcome.[213] Over time, schools began to rewrite policies in language accessible to students, create clear webpages, design engaging programming, and even issue annual reports to demystify the rules, the

---

212. It may be helpful for an institution to expose its community members—students, faculty, and staff—to key Supreme Court observations about why contentious speech is generally protected and how an institution can restrict speech that actually interferes with its operations. See, e.g., Healy v. James, 408 U.S. 169, 171 (1972) (describing the "mutual interest of students, faculty members, and administrators in an environment free from disruptive interference with the educational process" and "the equally significant interest in the widest latitude for free expression and debate consonant with the maintenance of order"). Justice William Douglas's observation may also be illuminating:

> If we are to become an integrated, adult society, rather than a stubborn status quo opposed to change, students and faculties should have communal interests in which each age learns from the other. Without ferment of one kind or another, a college or university (like a federal agency or other human institution) becomes a useless appendage to a society which traditionally has reflected the spirit of rebellion.

Id. at 197 (Douglas, J., concurring); see also Rumsfeld v. F. for Acad. & Institutional Rts., Inc., 547 U.S. 47, 68 (2006) ("The right to speak is often exercised most effectively by combining one's voice with the voices of others. If the government were free to restrict individuals' ability to join together and speak, it could essentially silence views that the First Amendment is intended to protect." (citation omitted)).

For examples of introducing students to "freedom of thought and expression as core tenets of the university," see Daniels et al., supra note 123, at 68–69, 87–88, 92–94. Princeton University President Christopher Eisgruber also has recently discussed in depth and with examples the challenges and possibilities of fostering a campus culture of respectful discourse and disagreement. Christopher L. Eisgruber, Terms of Respect: How Colleges Get Free Speech Right (2025).

213. See, e.g., Am. L. Inst., Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities § 2.1, Lexis (2024) (addressing the importance of policies that are clear and understandable for affected students); Brian A. Pappas, Out From the Shadows: Title IX, University Ombuds, and the Reporting of Campus Sexual Misconduct, 94 Denv. L. Rev. 71, 107 (2016) ("In order to reconcile compliance with cooperation and address the crisis of legitimacy facing Title IX Coordinators, universities must provide clear and understandable grievance policies and processes."); Laura Beth Nielsen & Kat Albrecht, Make Title IX Policies More Student-Friendly, Inside Higher Ed (Aug. 14, 2022), https://www.insidehighered.com/views/2022/08/15/title-ix-policies-must-be-more-student-friendly-opinion [https://perma.cc/7HUH-4B6M] (describing how students "were largely unable to comprehend various critical terms and concepts in the policy—including the definition of sexual assault and the university's standard of proof in disciplinary hearings about sexual assault").

disciplinary process, and the resources available to students.[214] None of this is a panacea, but there is little excuse for not taking these steps for Title VI processes as well, and thereby supporting community citizenship through better access to information and reduced barriers to the community's trust.[215]

CONCLUSION

On an active college or university campus, tensions from speech about race, ethnicity, and national origin, including shared ancestry, often simmer just below the surface as students interact across their differences in background, views, identity, and more. Viewed through this lens, occasional sharp conflicts do not, by themselves, mean a school has failed. Given the tension inherent in supporting free inquiry and a robust learning environment for all students, the problem, instead, is when schools are surprised or underprepared.

The current Administration's punitive use of Title VI misleadingly urges schools to treat Title VI as the answer for averting or managing these conflicts. By threatening institutional funding while skipping over the statute's restrictive procedural requirements, the Administration transformed Title VI from an important tool for addressing discrimination at schools and universities to a high-pressure and startlingly broad lever on schools to revamp admissions; curriculum; nondiscriminatory diversity, equity, and inclusion programming; and governance. Whatever one thinks of its motives, these actions suggest no meaningful interest in pressing higher education institutions to achieve Title VI's inclusionary aims as reflected in the statute and its decades-long implementation history.

Relocating Title VI compliance in a broader set of institutional responsibilities centered on community citizenship holds far more promise for achieving those aims and preparing schools for inevitable conflicts among students. To be sure, the changes this Piece suggests to federal engagement on these issues are highly unlikely to be adopted by

---

214. See, e.g., Be Proactive With Title VI and Title IX Investigations in Education, CLA Connect (Apr. 15, 2025), https://www.claconnect.com/en/resources/articles/25/title-vi-title-ix-policies [https://perma.cc/L5VB-MWAF] (describing, from the vantage point of a consultant to higher education institutions, the importance of "clear, documented policies" for Title IX investigations). For an example of an annual report, see Gender-Based Misconduct Off., Columbia Univ., Student Gender-Based Misconduct Prevention and Response: 2022–2023 Annual Report (2024), https://genderbasedmisconduct.columbia.edu/sites/default/files/content/Documents/Annual%20Reports/2022-2023%20Annual%20Report%20-%20FINAL%20-%20FOR%20PUBLISHING.pdf [https://perma.cc/83YL-NZRW].

215. Cf. Margaret Attridge, Students File Lawsuits, Complaints Against Universities Over Pro-Palestinian Protest Response, Best Colls., https://www.bestcolleges.com/news/students-file-lawsuits-complaints-against-universities-over-pro-palestinian-protest-response/ [https://perma.cc/KV3S-XU4Y] (last updated Sep. 24, 2024) (describing how the rapid ramp-up in enforcement of Title VI policies in response to protests gave rise to concerns about uneven implementation).

the current Administration, though schools would be well advised to attend now to the ways they foster campus community citizenship, including through conflict de-escalation, skills-building, and informal conflict-resolution processes, along with their formal Title VI compliance mechanisms.

Still, by putting recent events in the context of the statute's sixty-one-year history, this Piece hopes to reinvigorate discussion of Title VI in ways that build on the statute's strengths and also recognize its limits in responding to speech-based conflicts in higher education environments. As importantly, the discussion here seeks to ensure these limits are not the end of the conversation but rather an urgent reminder that the aims of Title VI will be achieved best not through enforcement alone but as part of a broader commitment to a thriving campus.