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ATTORNEY GENERAL

September 10, 2024

**OFFICIAL OPINION 2024-4**

The Honorable Craig Haggard  
Indiana House of Representatives  
200 West Washington Street  
Indianapolis, Indiana 46204

RE: Antisemitism in educational settings

Dear Representative Haggard:

You requested an opinion from the Office of the Indiana Attorney General (“OAG”) regarding certain questions on the topic of antisemitism in educational settings.

**QUESTIONS PRESENTED**

1. What statutory protections do students and employees in educational settings have against antisemitism?
2. What authority and obligations do schools and universities have to combat antisemitism in educational settings?

**BRIEF ANSWER**

The Indiana Code and various federal civil rights laws prohibit discriminatory conduct based on one’s religion, shared ancestry, or ethnic characteristics in, among other places, educational settings. Those laws apply to Jewish individuals as much as they do other protected classes. Title VI of the Civil Rights Act of 1964 protects against discrimination based on race, color, or national origin, which can include shared ancestry or ethnic characteristics and could encompass those who are of the same religion, in programs and activities receiving federal financial assistance, such as universities. Title VII of the Civil Rights Act of 1964 prohibits an employer from discriminating on the basis of race, color, religion, sex, and national origin. The Indiana Civil Rights Act (Ind. Code art. 22-9) also protects individuals from religious and other

types of discrimination in educational settings. Certain state and federal criminal laws may also apply in ways that may deter or combat antisemitism.

Many of these laws impose affirmative obligations on educators at the university and K-12 levels to combat antisemitism when it arises. In particular, educators may in many cases be required to take affirmative steps to end harassment, intimidation, and violence against Jewish individuals in the educators' schools and on their campuses.

## **BACKGROUND**

Religious tolerance and freedom of worship have been central to America's laws and values since colonial times. Many of the first settlers of North America—and numerous immigrants and refugees since—came here to escape religious persecution in their home countries. After achieving independence, Americans enshrined those values in the U.S. Constitution, which provides strong protections for religious freedom against encroachment by government authorities. The early settlers of Indiana instituted similar protections in the State's Constitution. Subsequently, through statutes, the federal government and the State of Indiana extended legal protections for freedom of conscience and religious practice against encroachment by other entities, such as employers and educational institutions.

Likewise, the United States has long embraced racial tolerance and sought to combat unfair and discriminatory treatment based on race, skin color, and national origin. Protections against racial discrimination are also found in the U.S. and Indiana Constitutions and various federal and state civil rights laws.

These values of religious and racial tolerance have, from the earliest years of our Republic, been extended to Jewish individuals. As George Washington wrote in a famous letter to the Hebrew Congregation in Newport, Rhode Island, “may the Children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants.”<sup>1</sup> Troublingly, President Washington's tolerant sentiments have not always been embraced around world. As a later U.S. President, Dwight Eisenhower, would note, after witnessing the “bestiality displayed” in the Nazi internment camps, he “was never so angry in my life.”<sup>2</sup> Even more troublingly, the virulent antisemitism that gave rise to the horrors of the Holocaust persists, and has even found a beachhead on the campuses of many American colleges and universities.

Fortunately, federal and state civil rights laws can go a long way in combatting this antisemitism. This opinion examines how those laws apply to prohibit acts of antisemitism in educational settings.

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<sup>1</sup> Letter from George Washington to the Hebrew Congregation in Newport, Rhode Island (Aug. 18, 1790).

<sup>2</sup> Dwight Eisenhower, Press Conference (June 18, 1945), *available at* <https://www.jewishvirtuallibrary.org/eisenhower-discusses-atrocities-at-press-conference>.

## ANALYSIS

### I. Relevant Law

#### *A. Federal law protects Jewish individuals from discrimination and harassment in employment and educational settings*

There are a number of federal laws that provide robust protection for Jewish individuals in schools and on college campuses. The Civil Rights Act of 1964 is the principal statute on which Jewish individuals may rely for protection against antisemitism in educational settings. The focus of this opinion is federal and Indiana civil rights statutes, and the opinion does not analyze constitutional law. However, the First and Fourteenth Amendment of the U.S. Constitution also unquestionably provide meaningful protection for Jewish individuals against antisemitism at educational institutions that are operated by the government, as shown by a recent U.S. District Court decision. *See Yitzchok Frankel et al., v. Regents of the University of California et al.*, 2024 WL 3811250 (C.D. Cal. Aug. 13, 2024).

##### *1. Title VI of the Civil Rights Act of 1964*

Title VI of the Civil Rights Act of 1964 (“Title VI”) provides that “[n]o 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 federal financial assistance.” 42 U.S.C. § 2000d. For purposes of the statute, the “clearest example of federal financial assistance is the award or grant of money.”<sup>3</sup> However, financial assistance that triggers application of the statute “may [also] take nonmoney form.” *U.S. Dep’t of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 607 (1986). For example, “federal financial assistance may include the use or rental of federal land or property at below market value, federal training, a loan of federal personnel, subsidies, and other arrangements with the intention of providing assistance.”<sup>4</sup> Thus, for purpose of the statute, “federal financial assistance” is defined in broad terms. As a result, Title VI will often apply to colleges, universities, K-12 schools, public libraries, and other social service programs, even some that do not receive direct federal grants.

Title VI “prohibits only intentional discrimination.” *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001). To assess whether an assistance recipient like a university has engaged in intentional discrimination, “[c]ourts have developed a number of analytical frameworks.”<sup>5</sup> Perhaps most obviously, a university or school may violate the statute if by its own deliberate actions, it treats students of one race less advantageously than students of another. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 214 (2023). In addition, “[i]n certain circumstances, courts view actions of a third party as intentional violations” of Title VI by the federal funding recipient itself. *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 664 (2d Cir. 2012). Thus, for example, in a case involving student-on-student harassment where the harassment is based on a protected characteristic, a school or university may violate the statute

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<sup>3</sup> U.S. Dep’t of Justice, Title VI Legal Manual, Section V, available at <https://www.justice.gov/crt/fcs/T6manual>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

where it “acts with deliberate indifference to known acts of harassment in its programs or activities.” *Davis v. Monroe Cty. Sch. Bd.*, 526 U.S. 629, 633 (1999).

Thus, Schools have a duty to protect their students against a hostile environment on school grounds. *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999). Plaintiffs bringing an action must establish that the school demonstrated “deliberate indifference” to student-on-student harassment—i.e., that it knew about the conduct and had the power to correct but failed to do so. *Id.* While this case applied specifically to sexual harassment under Title IX, numerous lower courts have extended *Davis*’ holding to Title VI discrimination claims. See *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 664-665 (2<sup>nd</sup> Cir. 2012); *Bryant v. Indep. Sch. Dist. No. 1-38 of Garvin Cnty., Ok.*, 334 F.3d 928, 934 (10<sup>th</sup> Cir. 2003); *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1033 (9<sup>th</sup> Cir.1998).

Under the statute—as in day-to-day life—race is “a complex concept that defie[s] a single definition.” *Equal Emp. Opportunity Comm’n v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018, 1026 (11<sup>th</sup> Cir. 2016). Thus, although Title VI does not prohibit discrimination on the basis of religion, it is still the case, as the U.S. Department of Education concluded as early as 2004, that “some cases of religious discrimination may also involve racial, ethnic or sex discrimination” that violate Title VI.<sup>6</sup> The Education Department has consistently adhered to that interpretation of the statute in multiple guidance documents over the ensuing 20 years.<sup>7</sup> As the Department explained in its most recent guidance on the subject, “Title VI’s protection from race, color, and national origin discrimination extends to students who experience discrimination, including harassment, based on their actual or perceived: (i) shared ancestry or ethnic characteristics; or (ii) citizenship or residency in a country with a dominant religion.”<sup>8</sup> Accordingly:

Schools that receive federal financial assistance have a responsibility to address discrimination against Jewish, Muslim, Sikh, Hindu, Christian, and Buddhist students, or those of another religious group, when the discrimination involves racial, ethnic, or ancestral slurs or stereotypes; when the discrimination is based on a student’s skin color, physical features, or style of dress that reflects both ethnic and religious traditions; and when the discrimination is based on where a student came from or is perceived to have come from, including discrimination based on a student’s foreign accent; a student’s foreign name, including names commonly associated with particular shared ancestry or ethnic characteristics; or a student speaking a foreign language.<sup>9</sup>

The Department of Justice has likewise interpreted Title VI to protect “discrimination against Jews, Muslims, Sikhs, and members of other religious groups . . . when that discrimination is based on the group’s actual or perceived shared ancestry or ethnic characteristics, rather than its members’ religious practice” or when “it is based on actual or perceived citizenship or residency

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<sup>6</sup> U.S. Dep’t of Educ., *Dear Colleague Letter: Title VI and Title IX Discrimination* (Sept. 13, 2004), <https://www2.ed.gov/about/offices/list/ocr/letters/religious-rights2004.pdf>.

<sup>7</sup> Congressional Research Service, *Religious Discrimination at School: Application of Title VI of the Civil Rights Act of 1964 at 3* (Mar. 22, 2024), available at <https://crsreports.congress.gov/product/pdf/LSB/LSB11129>.

<sup>8</sup> U.S. Dep’t of Educ., *Dear Colleague Letter: Addressing Discrimination Against Jewish Students* (May 25, 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf>.

<sup>9</sup> *Id.*

in a country whose residents share a dominant religion or a distinct religious identity.”<sup>10</sup> Other federal agencies have subsequently adopted similar interpretations of Title VI to guide their administration of the statute.<sup>11</sup>

In addition, in 2019, President Donald Trump issued Executive Order 13899, which “reaffirmed the long-standing principle that antisemitism and discrimination against Jews” may violate Title VI.<sup>12</sup> Through his Order, President Trump directed the federal government to “enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.”<sup>13</sup>

Decisional law on the subject is sparse. But at least five U.S. District Courts have held that discrimination or harassment motivated by antisemitism may violate Title VI. *See, e.g., T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 355 (S.D.N.Y. 2014), disagreed with on other grounds by *Agosto v. New York City Dep’t of Educ.*, 982 F.3d 86 (2d Cir. 2020); *Kestenbaum v. President & Fellows of Harvard Coll.*, 2024 WL 3658793, at \*5 (D. Mass. Aug. 6, 2024); *Shore v. Mirabilio*, 2019 WL 13293059, at \*7 (D. Conn. Mar. 8, 2019); *I.G. by & through Grunspan v. Jefferson Cnty. Sch. Dist. through Bd. of Educ. for Jefferson Cnty. Sch. Dist.*, 452 F. Supp. 3d 989, 1001 (D. Colo. 2020); *Welchel v. Cameron R-I Sch. Dist.*, No. 5:19-CV-06012-FJG, 2019 WL 13297938, at \*2 (W.D. Mo. Nov. 13, 2019). In addition, various courts applying Title VII—a statute that, unlike Title VI, prohibits discrimination based on religion, in addition to the categories of race, color, and national origin protected by Title VI, have sustained discrimination claims brought by Jewish individuals as having stated a claim for both religious *and* national origin discrimination. *See, e.g., Weiss v. United States*, 595 F. Supp. 1050, 1058 (E.D. Va. 1984); *Compston v. Borden, Inc.*, 424 F. Supp. 157, 161 (S.D. Ohio 1976).

Taken together, this caselaw and the consistent interpretations of Title VI by Administrations of both parties across decades leaves little doubt that Title VI prohibits discrimination or harassment based on Jewish identity. That is the correct legal conclusion; it is also the correct moral conclusion; and it is the conclusion that should guide educators as they confront incidents of antisemitism on campuses and in schools.

## 2. Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits an employer from failing or refusing to hire or to discharge any individual, or otherwise discriminating against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2. Title VII also

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<sup>10</sup> Letter from Ass’t Att’y General Thomas Perez to Ass’t Sec. for Civ. Rights Russlynn H. Ali re Title VI Coverage for Religiously Identifiable Groups (Sept. 8, 2010), *available at* [https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810\\_AAG\\_Perez\\_Letter\\_to\\_Ed\\_OCR\\_Title%20VI\\_and\\_Religiously\\_Identifiable\\_Groups.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810_AAG_Perez_Letter_to_Ed_OCR_Title%20VI_and_Religiously_Identifiable_Groups.pdf).

<sup>11</sup> *See e.g.,* U.S. Dep’t of the Interior, Fact Sheet: Protecting Individuals from Discrimination Based on Actual or Perceived Shared Ancestry or Ethnic Characteristics (Sept. 2023), *available at* <https://www.doi.gov/media/document/interior-fact-sheet-fcs-titleiv-9-26-23-pdf>.

<sup>12</sup> Exec. Order 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019); *available at* <https://www.govinfo.gov/content/pkg/DCPD-201900859/pdf/DCPD-201900859.pdf>.

<sup>13</sup>*Id.*

prohibits an employer from adversely affecting an individual's employment status or denying such person employment opportunities because of his membership in one of the protected categories. *Id.*

Thus, unlike Title VI, Title VII expressly includes religion as a protected category. Jewish individuals are therefore clearly protected against discrimination in employment regardless of whether antisemitic discrimination qualifies as discrimination based on race or national origin. *See, e.g., E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773 (2015).

Like Title VI, however, Title VII allows for plaintiffs to sue under a theory of "hostile work environment." To establish such a claim, a plaintiff must show that "the work environment was so pervaded by discrimination that the terms and conditions of employment were altered." *Vance v. Ball State University*, 570 U.S. 421, 427 (2013). An employer can be liable if they are either "negligent in controlling working conditions" or if the harasser is a "supervisor." *Id.* at 424. An employee can file a complaint with the Title VII enforcement agency, the U.S. Equal Employment Opportunity Commission ("EEOC"), if the individual believes they have been subject to harassment or discrimination based on their religion. Importantly, the hostile work environment need not be the result of the actions of employees of the employer. "An employer is liable when. . . non-employees create a hostile work environment if the employer knew or should have known about the harassment and failed to take immediate and appropriate corrective action."<sup>14</sup>

### ***B. State law similarly protects Jewish individuals from discrimination and harassment in employment and educational Settings***

Similar to federal law, various provisions of Indiana civil rights laws protect individuals from discrimination and harassment based on religion, race, and national origin in both educational and employment settings. In particular, the Indiana Civil Rights Act ("ICRA") protects K-12 and university students against discrimination on the basis of "race, religion, color, sex, disability, national origin, ancestry, or status as a veteran." Ind. Code Ann. § 22-9-1-3. All employers employing six or more persons in the State of Indiana are also subject to the ICRA. Ind. Code § 22-9-1-3(h).

### ***C. Criminal laws provide additional protection against harassment, intimidation, and violence***

In addition to civil rights protections at both the federal and state levels, violent or disruptive behavior directed at Jewish individuals may also violate various criminal laws, which thus provide further protection for Jewish individuals against antisemitic conduct. For example, participation in disruptive or violent protests or riots may constitute "tumultuous conduct" or "unlawful assembly" in violation of Ind. Code § 35-45-1-1 and Ind. Code § 35-45-1-2. Additionally, violent conduct directed at Jewish individuals may also constitute battery. *See* Ind. Code § 35-42-2-1.

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<sup>14</sup> U.S. Equal Employment Opportunity Comm'n, EEOC Enforcement Guidance on National Origin Discrimination (Nov. 18, 2016), available at [https://www.eeoc.gov/laws/guidance/eeoc-enforcement-guidance-national-origin-discrimination#\\_Toc451518819](https://www.eeoc.gov/laws/guidance/eeoc-enforcement-guidance-national-origin-discrimination#_Toc451518819).



Antisemitism often coincides with support for Hamas and Hezbollah—avowedly antisemitic groups that have been designated terror organizations by the State Department.<sup>15</sup> In some cases, antisemitic groups that operate in the United States may go so far as to provide direct material support, such as giving money, to groups like Hamas. Doing so may violate federal antiterrorism laws, which makes it a criminal offense to provide “material support or resources” to a person or organization knowing that the support “are to be used in preparation for, or in carrying out” various terrorist acts. 18 U.S.C. § 2339A. Indiana similarly makes it a felony to “provide[] material support to another person with the intent to assist the person in planning or carrying out terrorism.” Ind. Code § 35-46.5-2-5.

The Seventh Circuit’s decision in *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685 (7th Cir. 2008) is illustrative. In *Boim*, the court examined the liability of the Holy Land Foundation (“HLF”) for providing material support to terrorism by funding Hamas, a designated foreign terrorist organization. The court compared the act of providing resources that create a danger, like erasers used to create bombs, to the act of funding a terrorist organization. *Id.* at 697. The court held that providing material support, even if indirect, can lead to liability if it helps create a danger or facilitates terrorist activities. *Id.* at 697-704. It also emphasized that providing material support does not require proof that the support was used directly in terrorist attacks. The key element is that the support helps facilitate the operations of a terrorist organization, thus contributing to its ability to commit acts of terrorism. *Id.*

## II. Defining Antisemitism

Although there may be disagreements over what constitutes antisemitism, a widely accepted definition is the one adopted by the International Holocaust Remembrance Alliance (“IHRA”) in 2016.<sup>16</sup> Many government entities around the world, including the U.S. State Department, have adopted the definition to guide their work related to antisemitism.<sup>17</sup> Further, in his 2019 Executive Order on antisemitism, President Trump directed federal agencies to “consider the [IHRA’s] working definition of anti-Semitism and the IHRA’s contemporary examples of anti-Semitism in enforcing Title VI.” IHRA’s working definition of antisemitism is thus a useful guide for understanding what kinds of behavior may constitute unlawful discrimination or harassment under federal and state law.

IHRA defines antisemitism as a “certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”<sup>18</sup> The definition goes on to explain:

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<sup>15</sup> See U.S. Dep’t of State, Foreign Terrorist Organizations, available at <https://www.state.gov/foreign-terrorist-organizations>.

<sup>16</sup> The IHRA is an intergovernmental organization with 35 Member Countries—including the United States—that’s purpose is to strengthen, advance, and promote Holocaust education, remembrance, and research worldwide and uphold the commitments of the 2000 Stockholm Declaration and the 2020 IHRA Ministerial Declaration. See IHRA, About the International Holocaust Remembrance Alliance, available at <https://holocaustremembrance.com/who-we-are>.

<sup>17</sup> See U.S. Dep’t of State, Defining Antisemitism, available at <https://www.state.gov/defining-antisemitism/>.

<sup>18</sup> *Id.*

Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.<sup>19</sup>

Finally, the definition provides a non-exhaustive list of examples of behavior that may be considered antisemitic:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.

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<sup>19</sup> *Id.*



Although not legally binding in the United States or Indiana, this widely embraced definition accompanied by the enumerated examples provide a critical guide for understanding what kinds of conduct in educational settings may lead to violations of civil rights laws.

### **III. Antisemitism in Educational Settings**

To illustrate how the principles of the U.S. and Indiana Constitutions; federal and state civil rights laws; and federal and state criminal laws apply to protect—and obligate educators to protect—Jewish individuals in educational settings against antisemitism, this opinion considers a series of real-world and hypothetical examples. These examples are merely illustrative, and in no way show all the different ways in which the legal system at the federal and state levels provides robust protection against antisemitism in educational settings. But they do provide substantial guidance for educators in Indiana as educators confront antisemitism in the classroom and on campus.

#### ***A. Recent pro-Palestine demonstrations on college campuses***

In the spring of 2024, college and university campuses across the United States erupted in large, often disruptive, and sometimes violent demonstrations.<sup>20</sup> The demonstrations variously expressed opposition to the military actions Israel took in response to the October 7, 2023, massacre of Israeli civilians by Hamas; opposition to the support the U.S. government was providing to Israel; and support for Palestinians and, in some cases, Hamas. The protesters in many cases attempted to disrupt campus operations by shutting down commencement ceremonies, blocking other students' access to class and common spaces, and storming university buildings. In many cases, the demonstrations and actions of the protesters were explicitly antisemitic. Jewish students were at times threatened, intimidated, and attacked. University responses varied, but in many cases were lax or non-existent.

These events have spawned various lawsuits by Jewish students against their universities alleging that the universities violated federal and state law in how they responded to the protests. Thus far, in two cases courts have determined that the students' claims have merit and that the universities' failure to protect their students from antisemitism violated the law.

In *Kestenbaum v. President & Fellows of Harvard Coll.*, 2024 WL 3658793 (D. Mass. Aug. 6, 2024), Jewish students and a nonprofit, Students Against Antisemitism, Inc., sued Harvard University for “affirmatively ignore[ing] discrimination against Jewish and Israeli students” during a spate of demonstrations and other violent behavior that occurred on Harvard’s campus following the October 7, 2023, massacre of Israeli civilians. *Id.* at 1. Among other claims, the plaintiffs alleged deliberate indifference in violation of Title VI. *See id.* The plaintiffs’ allegation painted a stark picture of a campus fraught with antisemitism: pro-Palestinian, anti-Israeli protesters “marched through campus, staged classroom walkouts, and rallied in campus common areas, at times staying overnight;” during their marches, protesters “chanted provocative slogans such as ‘from the river to the sea,’ ‘free Palestine,’ and ‘globalize the intifada;”” the “bullying of

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<sup>20</sup> *See generally* Associated Press, A look at the protests of the war in Gaza that have emerged at US colleges (April 30, 2024), available at <https://apnews.com/article/gaza-war-campus-protests-966eb531279f8e4381883fc5d79d5466>.

Jewish students . . . spilled into classrooms,” such as when a “Harvard Law School Torts professor announced a final exam focused on the Israel/Gaza conflict;” “a Harvard Law School student who assaulted a Jewish student at [a] ‘die-in’ was permitted to remain in his position as a teaching fellow.” *Id.* “Antisemitic episodes persisted and, if anything, intensified into the spring 2024 semester,” when, among other things, pro-Palestinian protesters defaced posters that showed support for Israeli hostages and posted antisemitic messages in public places. *Id.* at 2. “The ongoing tumult caused many Jewish and Israeli students to fear for their personal safety and hindered their ability to complete their academic studies.” *Id.* Among other things, protesters barricaded one Jewish student in a classroom, and “surrounded and intimidated” other Jewish students. *Id.*

In its analysis, the Court explained that—under Title VI—an “institution is deliberately indifferent to student-on-student harassment if its response to the mistreatment is ‘clearly unreasonable in light of the known circumstances.’” *Id.* at 5. The Court held that Harvard’s reaction to the antisemitic conduct on its campus satisfied this standard because Harvard “did not respond at all” to the “eruption of antisemitism on the Harvard campus.” *Id.* at 6. The plaintiffs “plausibly pled that they were subject to severe, pervasive, and objectively offensive harassment.” *Id.* at 5. Yet “Harvard’s reaction was, at best, indecisive, vacillating, and at times internally contradictory.” *Id.* at 6. Notably, Harvard did not dispute that “Title VI protects Jewish students from harassment.” *See id.* at 5.

In a similar decision, the Court in *Yitzchok Frankel et al., v. Regents of the University of California et al.*, 2024 WL 3811250 (C.D. Cal. Aug. 13, 2024), granted plaintiffs—three Jewish students at UCLA—a preliminary injunction directing UCLA to “protect the religious freedom of its Jewish students” and ensure their ability to safely access the UCLA campus. Plaintiffs alleged that “a group of pro-Palestinian protesters occupied a portion of the UCLA campus” and “directly interfered with instruction by blocking students’ pathways to classrooms” in the case of any student who would not denounce Israel. *Id.* The three Jewish Plaintiffs asserted “they have a religious obligation to support the Jewish state of Israel,” and could not pass through the encampment. *Id.* Protesters disrupted other parts of campus as well. *See id.*

Plaintiffs brought suit arguing that UCLA’s failure to ensure their access to campus violated, among other things, the Equal Protection Clause, the Free Speech Clause, and the Free Exercise Clauses of the U.S. Constitution, as well as Title VI. *See id.* In assessing whether to grant a preliminary injunction, the Court only considered plaintiffs’ Free Exercise claim. The Court explained that a government entity—in this case a public university— “violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Id.* (quoting *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 778 (2022)). From this principle, the Court reached the conclusion that UCLA, a public university, had violated the Jewish students right to free exercise by effectively excluding them—by not removing the protesters’ encampment—from areas of campus that other students who did not share plaintiffs’ Jewish faith could access. *See id.*

A recent example from Florida shows how criminal laws may provide protection for Jewish students on campus.<sup>21</sup> In a letter sent shortly after the October 7, 2023, massacre, Chancellor Ray Rodrigues of the State University System of Florida wrote to the presidents of Florida’s state universities to advise them that the student chapters of the National Students for Justice in Palestine (“NSJP”) should be deactivated. Chancellor Rodrigues noted that following the October 7<sup>th</sup> massacre the NSJP had made clear that it was “part of” the Hamas movement, and distributed a “toolkit” to students to show them how they could help the “movement.”<sup>22</sup> Chancellor Rodrigues explained that this activity likely violated the Florida law—comparable to Indiana’s—that makes it a felony to provide material support for terrorism. This shows one way in which antisemitic student groups may violate criminal laws, in addition to infringing Jewish students’ civil rights.

## ***B. Other examples***

Beyond examples derived from events on college campus related to the October 7, 2023, massacre, educators and students can look to other sources for guidance on how federal and state laws protect Jewish students against antisemitism.

Recent guidance from the U.S. Department of Education provides a number of hypothetical examples of how antisemitic conduct may result in violations of Title VI.<sup>23</sup> For example, the Department suggests that Title VI may be violated where a college student is subjected to severe harassment because she is Jewish. In the hypothetical, the student’s dry-erase board on her dorm room door is defaced with swastikas, and epithets referencing poor hygiene and racial impurity of Jewish people and white supremacist slogans stating conspiracy theories about Jewish people, are written on her door and posted by fellow students as comments to the student’s social media feed. The student goes to her school counselor for help because the student no longer feels safe on campus. The counselor speaks with the student but takes no action. On these facts, the student’s college may have committed a violation of Title VI.

Other examples, including ones involving K-12 education, can be found in enforcement actions taken by the Education Department’s Office of Civil Rights (“OCR”).<sup>24</sup> For example, in August 2022, OCR found that an Arizona school district had violated Title VI when it failed to respond appropriately to complaints of ongoing antisemitic harassment of a Jewish student by numerous classmates, both in school and on social media. The harassment occurred over a period of five months and included antisemitic slurs and disparaging remarks about the student’s Jewish heritage. To resolve OCR’s investigation, the school district promised to address the student’s academic and counseling needs; revise its policies and procedures to address the fact that Title VI’s prohibition against harassment includes harassment based on Jewish ancestry; and train staff on these issues.<sup>25</sup>

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<sup>21</sup> Letter from Chancellor Ray Rodrigues to SUS Presidents (Oct. 24, 2023), available at <https://www.flbog.edu/wp-content/uploads/2023/10/Deactivation-of-Students-for-Justice-in-Palestine.pdf>

<sup>22</sup> *Id.*

<sup>23</sup> See U.S. Dep’t of Educ., *Dear Colleague Letter: Title VI and Shared Ancestry or Ethnic Characteristics Discrimination* (May 7, 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/05/colleague-202405-shared-ancestry.pdf>.

<sup>24</sup> White House, U.S. Strategy to Counter Antisemitism (May 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf>.

<sup>25</sup> *Id.* at 55.

Jewish employees of schools and universities subjected to antisemitic harassment may also find protection in Title VII. As detailed by witnesses—including university professors—at a recent hearing before the Subcommittee on Workforce Protections of the Committee on Education & the Workforce of the U.S. House of Representatives, antisemitism in the workplace that may create a hostile work environment and violate Title VII is all too common.<sup>26</sup> Evidence adduced at the hearing suggests that is especially true in university work settings. Educators have just as much of an obligation to address antisemitism directed at their employees as they do that experienced by students.

### ***C. First Amendment considerations***

Although the focus of this opinion is the civil rights protections students and school employees have against antisemitism and educators’ concomitant obligations to address antisemitism in educational settings, it is important to note that educators must be sensitive to First Amendment considerations when policing antisemitic expressions. “Speech that demeans on the basis of the same religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought that we hate.’” *Matal v. Tam*, 582 U.S. 218, 246 (2017). One of the canonical cases of our nation’s First Amendment jurisprudence is *National Socialist Party of America v. Village of Skokie*, 432 U.S. 43 (1977), in which the Supreme Court upheld the right of a group of Nazis to march in the streets of an Illinois town on the same terms that other organizations were allowed to engage in public demonstrations. Combatting antisemitism does not mean abandoning our First Amendment.

However, where speech crosses the line into harassment, threats, and intimidation, the First Amendment’s protection ends. *See Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). Freedom of speech should never be used as an excuse to tolerate antisemitic behavior that violates basic civil rights protections. Educators have a duty—legal and moral—to act in those circumstances.

## **CONCLUSION**

In sum, both federal and state law provide substantial protection for Jewish individuals against antisemitism in educational settings. Those laws also often impose significant obligations on educators to take affirmative actions to eliminate discrimination and harassment against Jewish individuals in their institutions. Students and educators should keep these protections and obligations in mind as a new school year begins.

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<sup>26</sup> U.S. House of Representatives Committee on Education and the Workforce, Subcommittee on Workforce Protections, Hearing on Combating Workplace Antisemitism in Postsecondary Education (June 26, 2024), available at <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=411707>.

Sincerely,

A handwritten signature in black ink that reads "Todd Rokita". The signature is written in a cursive style with a large, looping initial "T".

Todd Rokita  
Attorney General of Indiana

William H. Anthony, Chief Counsel, Advisory  
Christopher M. Anderson, Asst. Chief Counsel  
Hilari A. Sautbine, Supervising Dep. Attorney General