



Falling Through the Cracks:

How School Policies Deny Jewish Students Equal Protection from Antisemitism

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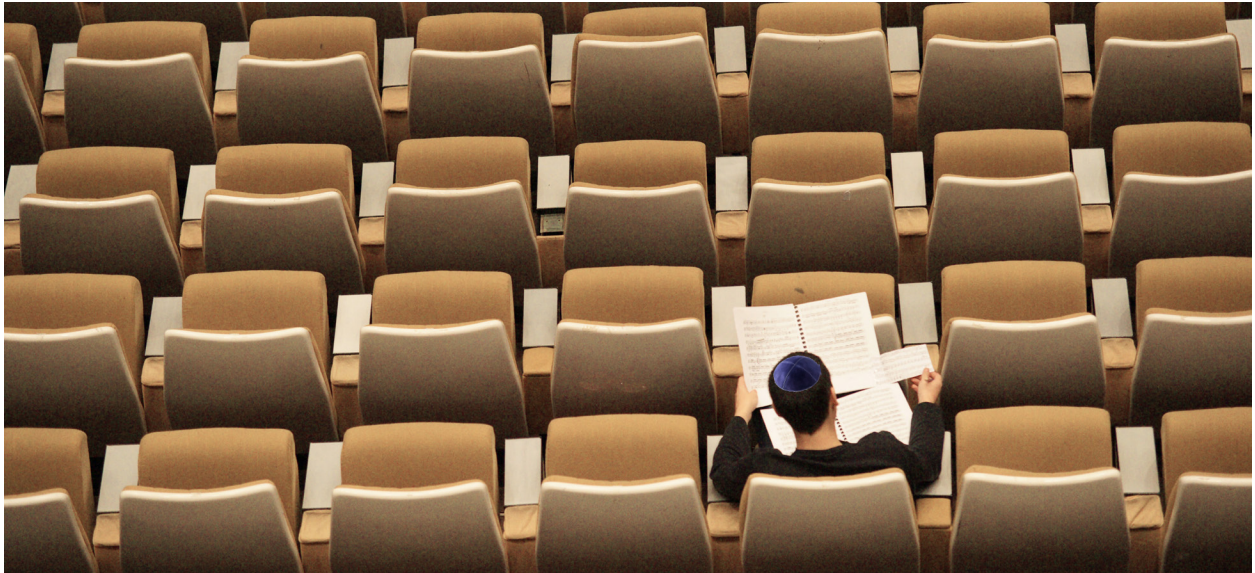
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Executive Summary



The mainstreaming and normalization of antisemitism among entertainers, athletes, corporate executives, and politicians have reached alarming levels of late, and what were once considered fringe and extremist views are now being spewed publicly on social media, on network television and in the halls of Congress. However, this has long been the reality on U.S. college and university campuses, and the problem is rapidly becoming more acute.

A recent AMCHA Initiative study revealed that attacks on Jewish student identity—including well-coordinated campaigns of vilification using classic antisemitic tropes of Jewish power, control and privilege carried out by students and professors alike—doubled this year on campuses across the country. Whether the source of the antisemitism emanates from the right, in the form of classic antisemitism, or from the left, in the form of anti-Zionism, the rhetoric used to portray Jews is becoming increasingly similar. While they direct their bigotry to different audiences, their intended effect is the same: to portray Jews as a threat to the common good, whose malevolent influence must be challenged and neutralized.

Compounding the problem, on campuses today, where student identity plays a critical role in determining administrative responses to harassing behavior, the defamatory portrayal of Jews and Zionists as powerful and privileged oppressors has made it even harder for Jewish and pro-Israel students to receive protection from the harassment accompanying the assault on their identity. While university officials respond promptly and vigorously to harassing behavior directed at some

students, they ignore or downplay equally harmful acts directed at Jewish and pro-Israel students. This is particularly true when it comes to acts of aggression motivated by anti-Zionism, which constitute the majority of antisemitic incidents on campuses most popular with Jewish students.

Seeking to understand the institutional structures that have given license to the unabated proliferation of antisemitism on campus before it escalates further, the current study examined the two main mechanisms in place to protect students from such behavior—university harassment policies and student codes of conduct.

Harassment Policies: While many of the incidents involving anti-Zionist motivated harassment have been severe, pervasive or persistent enough to create for their victims a hostile environment that likely meets the definition of harassment contained in almost every school's harassment policy, Jewish and pro-Israel students have often not been able to seek redress under their school's policy. This is because these policies, based on state and federal anti-discrimination law, are designed to address only those instances of harassing behavior that target students because of their membership in particular "protected" identity groups. And although harassment policies typically include "religion" and "ethnicity" as protected classes, many school administrators do not consider Zionism as integral to a Jewish student's religious beliefs or ethnicity. Furthermore, even if anti-Zionist motivated harassment were to be recognized as a form of "protected class" harassment, the same behavior targeting *non-Jewish* pro-Israel students would not be recognized as such.

Codes of Conduct: Students who are victims of harassing behavior but do not fit into a protected class must seek redress under the school's generic code of conduct, but the question remains as to whether the protections from harassment afforded *non-protected* class students under the school's general behavior regulations are equivalent to the protections afforded students under the school's official harassment policy.

The current study examined this question by comparing the harassment policies and codes of conduct at 100 public and private colleges and universities popular with Jewish students. We found:

1. While every school's harassment policy included verbal abuse as a form of harassment, nearly one-quarter (23) of the codes of conduct did not include verbal abuse in their descriptions of prohibited behavior.
2. While every school's harassment policy defined harassment as conduct that limited, interfered with, or impaired a student's ability to participate in campus life, less than 40% (38) of the school codes of conduct described harassing behavior in this way.
3. While all of the harassment policies included a description of robust protection from retaliation for those who filed complaints, almost half (49) of the school codes did not even mention retaliation protection.

4. More than one-third (35) of the schools included in their codes of conduct statements affirming that harassment of students in “protected” identity groups would receive more severe punitive sanctions than similar behavior directed against “unprotected” students.
5. In more than three-quarters (76) of the schools, complaints of harassment targeting students in “protected” identity groups were handled by a special administrative office that focused on handling complaints of harassment and discrimination exclusively, while complaints about harassing conduct directed at students who are not members of protected identity groups were handled by the same office that handled all student conduct complaints.
6. There were no schools where “unprotected” students were guaranteed administrative consideration of and response to harassing behavior equivalent to that guaranteed to “protected” students.

These findings provide strong empirical evidence to support the complaints of Jewish and pro-Israel students that school administrators do not treat their claims of anti-Zionist motivated harassment adequately or fairly.

Another fundamental difference between every school’s harassment policy and code of conduct that is likely to negatively impact Jewish and pro-Israel students is how each interacts with constitutionally protected speech. While federal law exempts from First Amendment protection any expression that meets the legal behavioral threshold for harassment and is directed at a student because of his or her membership in a legally “protected class,” there is no such First Amendment exception granted to abusive conduct that meets the *behavioral* threshold of harassment but is directed at a “*non-protected class*” individual. This means that students who suffer abusive verbal conduct that was not deemed to have been directed at them because of their membership in a “protected class” are doubly disadvantaged: not only are their harassers afforded free speech protection that is, in effect, license to continue verbally harassing them, but their *own* freedom of speech and academic freedom is diminished by the harassment.

Students who suffer abusive verbal conduct that was not deemed to have been directed at them because of their membership in a protected class are doubly disadvantaged by this policy disparity. Not only are their harassers afforded free speech protection that is, in effect, license to continue verbally harassing them, but their own freedom of speech and academic freedom is diminished by the harassment.

One approach to address the problem is to ensure that Jewish students are guaranteed “protected” status even when the harassment they’re experiencing is motivated by anti-Zionism. Another approach, which we recommend, is to require that schools use a single standard to judge objec-

tionable behavior: language and action deemed unacceptable when directed at students from one group must be deemed unacceptable when directed at *any* student, *irrespective of the motivation of the perpetrator or the identity of the victim*.

Draft policies currently under consideration at Harvard University can serve as a model for implementing this recommended approach, as they guarantee “unprotected” students the administrative consideration of and response to harassing behavior equivalent to that granted “protected” students. The report concludes with a set of recommendations to school administrators, college and university consumers, and state and federal legislators:

1. Administrators should establish policies that treat harassing behavior **equally** for **all** students, ***irrespective of the motivation of the harasser or the identity of the victim***.
2. University consumers (students and parents) and donors must demand equal and adequate protection for all students from harassing behavior that threatens their safety and impedes their full participation in campus life, and condition decisions regarding the school on whether administrators can guarantee such fundamental protection.
3. Legislators should consider new legislation, similar to Title VI of the Civil Rights Act, that establishes a clear legal process and robust government enforcement mechanisms for ensuring that all students in state and federally funded schools are equally and adequately protected from harassing behavior that would “interfere with or limit the ability of a student to participate in or benefit from the services, activities or privileges provided by the recipient [of state or federal funds].”

The Problem



Against the backdrop of rapidly rising antisemitism in the United States and violent identity-based hate crimes that have spilled over onto campus,¹ a recent AMCHA study² documenting a “pervasive and relentless assault on Jewish identity” at colleges and universities across the country raises two causes for serious concern. The first focuses on the sheer scope of the threat, with the study noting that no other campus identity group is subject to the kinds of well-orchestrated attacks on their identity that Jewish and pro-Israel students are routinely subject to. The study found that these attacks, involving the use of classic antisemitic tropes of Jewish power and privilege to vilify Jewish or Zionist identity and coordinated efforts to bully Jewish and pro-Israel students into silence, doubled over the last year.

Even more worrisome, however, is that on campuses today, where identity plays an outsized role in campus life and is often the basis for the assignment of institutional protection by university administrators, the assault on Jewish student identity has not only led to the increased harassment of Jewish and pro-Israel students. Its portrayal of them as powerful and privileged oppressors has undermined their ability to seek administrative redress from that harassment.

The current study investigates the institutional structures that have given license to the unabated proliferation of anti-Zionist motivated harassment on U.S. campuses and locates its source in the

¹ <https://www.jta.org/2022/11/23/united-states/jewish-security-group-credited-with-averting-ny-attack-says-an-antisemitic-murder-in-arizona-could-have-been-prevented>

² <https://amchainitiative.org/wp-content/uploads/2022/11/Assault-on-Jewish-Identity-Report.pdf>

unfair and inadequate treatment of Jewish and pro-Israel students under most schools' behavioral policies.

THE TREATMENT OF ANTI-ZIONIST MOTIVATED HARASSMENT UNDER SCHOOL HARASSMENT POLICIES

On some campuses, anti-Zionist motivated incidents have been severe, pervasive or persistent enough to create for their Jewish victims a hostile environment that has negatively affected their ability to participate in or benefit from their college or university experience. In such cases, the abusive conduct likely meets the definition of harassment contained in most school's Non-Discrimination and Harassment policy (referred to throughout this report as a school's "harassment policy"), such as this one from Northwestern University:

Prohibited harassment is verbal or physical conduct or conduct using technology...that has the purpose or effect of substantially interfering with the individual's educational or work performance, or creating an intimidating, hostile or offensive working or academic environment...[that is] so severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives a member of the community of the ability to participate in or to receive benefits, services, or opportunities from the University's education or employment programs and/or activities... Examples of harassment can include offensive jokes, slurs, name calling, intimidation, ridicule or mockery, or displaying or circulating offensive objects and pictures...³

However, despite the fact that these anti-Zionist motivated ad hominem attacks often meet the behavioral threshold for prohibited harassment articulated in their school's harassment policy, students who fall victim to such behavior frequently report that while university officials respond promptly and vigorously to harassing behavior directed at some students, they ignore or downplay equally harmful acts directed at Jewish and pro-Israel students.

Underscoring this double standard, a recent federal complaint filed on behalf of Jewish students at the University of Illinois Urbana Champaign by the Louis D. Brandeis Center for Human Rights Under Law included the charge that the university had failed to combat numerous instances of anti-Zionist motivated harassment "as vigorously as it has combated other forms of bigotry on its campus." In support of their claim, the complainants contrasted the university's "swift, immediate, and unequivocal response" to an incident of racially motivated harassment with administrators' "deficient responses" to anti-Zionist incidents that were no less offensive to Jewish students.

³ <https://www.northwestern.edu/equity/documents/discrimination-harassment-policy-resources-procedures-final.pdf>

⁴ <https://brandeiscenter.com/wp-content/uploads/2020/10/Summary-of-Title-VI-Complaint.pdf>

"PROTECTED" VERSUS "UNPROTECTED" CLASS HARASSMENT

The "deficient responses" of school administrators across the country to complaints of Jewish and pro-Israel students harmed by anti-Zionist motivated conduct can be traced back to school harassment policies themselves.

In large measure, the "deficient responses" of school administrators across the country to complaints of Jewish and pro-Israel students harmed by anti-Zionist motivated conduct can be traced back to school harassment policies themselves. Written to comply with state and federal anti-discrimination law, these policies are not designed to address all instances of harassing and abusive behavior, only those directed at students because of their membership in particular identity groups.

For example, the Northwestern University policy, whose definition of harassment was cited above, only addresses conduct "directed toward someone because of their membership in a protected class." Typical of most schools' harassment policies, the "protected classes" covered by Northwestern's policy consist of "race, color, religion, national origin, sex, pregnancy, sexual orientation, gender identity, gender expression, parental status, marital status, age, disability, citizenship status, veteran status, genetic information, or any other classification protected by law."

This means that even though students may be victims of conduct that meets this policy's behavioral threshold for harassment, and is "so severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives" students of their ability to fully participate in campus life, *if the conduct is not directed at a student because of his or her membership in a protected class, the student will not be protected by the policy.* Emphasizing this point, Northwestern's policy states: "Please note, general bullying or uncivil behavior that is not based on a protected class does not fall within the purview of this policy or the Office of Equity."

While all school harassment policies include "religion" as a protected class, and many also include "ethnic origin" or "ethnicity," Jewish students who fall victim to harassment motivated by their support for Israel are often not covered by these policies, since many university administrators do not consider support for Israel an expression of a Jewish student's religious beliefs or ethnicity. And despite the fact that in recent years considerable efforts have been made by Jewish student groups and communal organizations to get schools to adopt the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism,⁵ which includes examples identifying anti-Zionist rhetoric as antisemitic, most administrators are hesitant to do so, fearing pushback from students and faculty claiming the definition impedes their freedom of speech.⁶ And although a few American schools have formally endorsed the IHRA definition,⁷ to our knowledge none has explicitly

⁵ <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

⁶ AMCHA's study on antisemitic activity in 2019 suggested that a three-fold increase in anti-Zionist student and faculty rhetoric denying the IHRA definition's identification of anti-Zionism with antisemitism was largely a response to increased efforts by Jewish student and community groups to get universities and government agencies to adopt the IHRA definition.

committed to using the full definition in adjudicating cases of anti-Zionist harassment under their school's harassment policy.

However, even if a school's policy were to recognize anti-Zionist motivated harassment as a form of protected class harassment, it would only obligate administrators to address conduct directed at Jewish students; non-Jewish pro-Israel students who fall victim to such anti-Zionist behavior would continue to be unprotected by their school's harassment policy.

This distinction highlights a troubling inequality: under school harassment policies, the *exact same harmful behavior* will be either addressed or ignored by administrators, based solely on the identity of the student. Even more troubling is the fact that the severe, pervasive or persistent behavior in question—whose effect is to limit, interfere with or deny a student the ability to participate in or receive benefits, services, or opportunities from the school's educational programs and/or activities—is clearly behavior that **no** student should have to contend with, *irrespective* of his or her identity.

Indeed, ensuring that students are able to fully access the educational programs and activities they pay for, often quite dearly, is certainly a moral if not a legal obligation of every institution of higher education, public or private.

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AN EXAMPLE OF DISPARATE TREATMENT UNDER UNIVERSITY POLICIES

Under what policy, then, are students who do not fit into the "protected classes" able to seek redress from harassing behavior? Presumably under their school's general code of conduct, which applies to all students and describes prohibited behaviors and how the school will address them. But how does the treatment of harassing behavior under a school's code of conduct compare to its treatment under the school's harassment policy?

Let's consider the case of Northwestern University (NU). The school's code of conduct, located

⁷ For example, the president of Florida State University said that the university "recognizes" the IHRA definition (<https://news.fsu.edu/news/university-news/2020/08/12/a-message-from-president-john-thrasher-an-update-on-antisemitism-and-religious-discrimination/>), and New York University agreed to adopt the first part of the IHRA definition, which excludes the identification of anti-Zionism with antisemitism, as part of a settlement of a student's civil rights complaint (<https://www.insidehighered.com/news/2020/10/02/new-york-university-settles-anti-semitism-case-education-department>).

in the Student Handbook,⁸ includes several kinds of prohibited behaviors, none of which closely matches the behavioral definition of harassment found in the school's harassment policy, cited above. The closest category of behavior is what the code calls "Endangering Self and Others," which is defined as "[a]ny action (or threat of action) that endangers or threatens to endanger the health, safety, or wellbeing of any person...[including] acts that endanger human life, or threaten physical injury...[and] unwanted physical contact with any person that reasonably places that person in fear of physical injury or danger (e.g., physical restriction, fighting, pushing, punching, slapping, spitting on, and/or kicking any person)."

While some cases of anti-Zionist motivated harassment may involve actions or threats of action that physically endanger Jewish and pro-Israel students, most do not. Rather, they involve verbal conduct, which means that the Jewish and pro-Israel students at NU who are the targets of such behavior will find it very difficult to seek redress under the school's code of conduct, even if the verbal abuse they are experiencing meets the behavioral threshold for harassment in the school's harassment policy and is so severe, persistent and pervasive as to limit their ability to participate in campus life.

Furthermore, although the code of conduct is consistent with the school's harassment policy in strictly forbidding retaliation against anyone who brings a complaint under the code, a closer look at the two policies reveals other significant differences in how complaints of protected versus non-protected class harassment are treated that clearly favor students who are members of protected classes. For example:

- If behavior prohibited by the NU's code of conduct is found to have been motivated by a student's membership in a protected class, "[disciplinary] sanctions may be enhanced up to and including separation from the University," providing an additional deterrent to engaging in the harassment of students in protected classes that affords them an extra layer of protection from such behavior when compared to their unprotected peers.
- Complaints of protected class harassment are handled by at least six staff members in NU's Office of Equity,⁹ whose central mission is to support students affected by discrimination and harassment, whereas complaints of non-protected class harassment are handled by four staff members in the Office of Community Standards,¹⁰ whose mission includes resolving any kind of student conduct violation at NU.

These differences suggest that students who do not meet the requirements for protected status under NU's harassment policy are not likely to receive the same level of concern and attention to their complaints of equally harmful harassment as students who do meet the protected class requirements.

⁸ <https://www.northwestern.edu/communitystandards/student-handbook/prohibited-restricted-conduct.html>

⁹ <https://www.northwestern.edu/equity/about/our-staff/index.html>

¹⁰ <https://www.northwestern.edu/communitystandards/about-us/meet-the-team/index.html>

HARASSMENT AND FREEDOM OF SPEECH

It is important to note one final difference in how NU's policies treat complaints of harassing behavior, which has large implications for any student who is not a member of a protected class. Like all institutions of higher education, NU must strike a balance between its obligation to protect all students' freedom of speech and its obligation to protect students from harm that may be a result of such speech. The school's harassment policy states:

Northwestern is firmly committed to free expression and academic freedom. The University is equally committed to creating and maintaining a safe, healthy, and discrimination and harassment-free environment for all members of its community, and firmly believes that these two legitimate interests can coexist.

However, the policy goes on to state that discrimination and harassment on the basis of protected classes "are not protected expression or the proper exercise of academic freedom." In other words, although the school is "firmly committed" to free speech and academic freedom, an exception is made for expression that meets the policy's definition of protected class harassment. Tellingly, no such exception is made in NU's code of conduct for equally harassing expression that affects the ability of a non-protected class student to fully participate in campus life; in these cases, the school's commitment to free speech and academic freedom outweighs non-protected class harassment, and its victims are not entitled to redress.

Students who suffer abusive verbal conduct that was not deemed to have been directed at them because of their membership in a protected class are doubly disadvantaged by this policy disparity. Not only are their harassers afforded free speech protection that is, in effect, license to continue verbally harassing them, but their own freedom of speech and academic freedom is diminished by the harassment. This point is brought out clearly in the harassment policy of the University of Southern California (USC), which also grapples with the question of how to juggle its commitment to securing for its students an educational environment free of protected-class harassment with its equal commitment to maintaining academic freedom and free speech:

Our academic community also recognizes that when [protected class] harassment is committed against students or faculty, it threatens their academic freedom... Therefore, allegations of harassment involving elements of speech that arise in the educational context will be considered in keeping with the University's commitment to academic freedom and free speech.

Unfortunately for USC students who are not covered by their school's harassment policy, abusive verbal conduct that "threatens their academic freedom" will not be acknowledged as such, and their aggressors' free speech and academic freedom will be more zealously protected than their own.

¹¹ <https://policy.usc.edu/wp-content/uploads/2022/08/Policy-on-Prohibited-Discrimination-Harassment-and-Retaliation.pdf>

Investigation



INVESTIGATING THE TREATMENT OF ANTI-ZIONIST MOTIVATED HARASSMENT UNDER SCHOOL POLICY

Given that Jewish students targeted by anti-Zionist motivated harassment are often not covered under their school's harassment policy, and that non-Jewish pro-Israel students are almost never covered, an investigation was undertaken to determine how well the general codes of conduct at the four-year public and private colleges and universities most popular with Jewish students measure up to these schools' harassment policies.

Utilizing Hillel International's list of the 120 top public and private colleges and universities in North America by Jewish population,¹² and eliminating all two-year colleges and Canadian schools as well as any school that did not have a publicly accessible "harassment policy" or formal statement¹³ about how it identifies and responds to incidents of "protected class" harassment, the current study focused on the 100 remaining schools on the list, which were nearly evenly divided between public (48 schools) and private (52 schools). See Appendix for a list of the 100 schools included in the study.

At each school, the code of conduct was assessed for whether and how well, compared to the

¹² <https://www.hillel.org/college-guide/top-60-jewish-schools>

¹³ At most schools, the statement is part of a "Non-Discrimination, Harassment and Retaliation Policy," sometimes simply called a "Non-Discrimination Policy." At other schools, the statement is incorporated into the school's code of conduct

school's harassment policy, it was able to address the most prevalent forms of anti-Zionist motivated behavior, especially verbal abuse, which met the school's definition of harassment.

CRITERIA FOR EVALUATING CODES OF CONDUCT AND HARASSMENT POLICIES

The following criteria were used for evaluating the differences between each school's harassment policy and code of conduct:

- Whether the prohibited behaviors in each policy included verbal abuse.
- Whether each policy acknowledged that harassing behavior "limits," "interferes with," "impedes" or "impairs" a student's ability to participate in campus life.
- Whether each policy stated that retaliation against students who report the harassing behavior is prohibited.
- Whether a school's code of conduct indicated there would be enhanced punitive sanctions for harassing behavior targeting students in "protected" classes.
- Whether complaints of harassing behavior falling under the harassment policy were handled in the same administrative office as harassing behavior falling under the code of conduct alone.
- Whether each policy mentioned the school's commitment to "freedom of speech/ expression" or "academic freedom."
- Whether any school policy (including the harassment policy, code of conduct or free speech policy) explicitly stated that violations of the harassment policy or code of conduct are not considered protected (free) speech.
- Whether any school policy (including the harassment policy, code of conduct or free speech policy) explicitly stated that violations of the harassment policy or code of conduct are still considered protected (free) speech.

FINDINGS

A comparison of the harassment policy and code of conduct at each school found:

- **While every school's harassment policy included verbal harassment, nearly one-quarter (23) of the schools' codes of conduct did not specify verbal abuse as a form of prohibited behavior.** Students at a school with such a code of conduct who do not fit into a protected category have little or no administrative recourse to address verbal harassment.

- While every school's harassment policy defined harassment as conduct that limited, interfered with, or impaired a student's ability to participate in campus life, **less than 40% (38) of the school codes described harassing behavior in this way**; most schools did not recognize this crucial impact of harassing behavior and were therefore less likely to treat such behavior as seriously as they do when directed at members of "protected" identity groups.
- While all of the harassment policies included a description of robust protection from retaliation for those who filed complaints, **almost half (49) of the school codes of conduct did not even mention retaliation protection**, leaving "unprotected" claimants more vulnerable and, in turn, less likely to report harassing behavior to administrators for fear of retaliation.
- **More than one-third (35) of the schools included in their codes of conduct statements affirming that the harassment of students in protected identity groups would receive more severe punitive sanctions than similar behavior directed against "unprotected" students**, thereby creating a more robust deterrent against the harassment of students in protected identity groups than against those who are not members of such identity groups.
- **In more than three-quarters (76) of the schools, complaints of harassment targeting students in "protected" identity groups were handled by a special administrative office with staff dedicated to handling cases of discrimination and harassment exclusively** (e.g. Office of Equity and Inclusion, Equal Opportunity Office, Office of Investigations and Civil Rights Compliance, etc.), while complaints about harassing conduct directed at students who are not members of protected identity groups were handled by the same office as all other complaints of potential code violations (e.g. Office of Student Conduct, Office of the Dean of Studies, Office of Judicial Administrator, etc.), suggesting less care and attention provided to complaints of unprotected students.
- **There were no schools where "unprotected" students were guaranteed administrative consideration of and response to harassing behavior equivalent to that guaranteed to "protected" students**; that is, no school's code of conduct contained all of the following:
 - Indicated that harassing behavior (including verbal abuse) is prohibited;
 - Acknowledged that harassing behavior limits, interferes with, or impairs a student's ability to participate in campus life;
 - Stated that retaliation against students who report harassing behavior is prohibited;
 - Made no distinction between the punishment meted out for harassing behavior directed against "protected" and "unprotected" students;
 - Indicated that complaints of harassing behavior directed at "unprotected" students were handled in the same administrative office as behavior directed at "protected" students.

These findings provide strong empirical evidence to support the complaints of Jewish students across the country that school administrators do not treat their claims of anti-Zionist motivated harassment adequately or fairly.

HARASSMENT POLICIES, CODES OF CONDUCT AND FREEDOM OF EXPRESSION

There is, however, another crucial disparity that was found in how harassing behavior is considered in many schools' harassment policies and codes of conduct that is a direct result of the way in which they each interact with the school's commitment to freedom of expression, including free speech and academic freedom.

All of the colleges and universities in our study have publicly stated their commitment to freedom of expression, often in a separate policy devoted to it, with most extolling the virtues of those freedoms and the essential role they play in the functioning of their institutions of higher education. Many schools also note that freedom of expression is a right guaranteed by the First Amendment of the U.S. Constitution, which grants students at all public and some private¹⁴ institutions of higher education First Amendment protections.

A majority of the harassment policies and codes of conduct in our study discussed or alluded to the inherent tension between protecting students' expression and protecting against harmful behavior that could result from that expression: **more than three-quarters (76) of schools' harassment policies and more than 60% (61) of schools' codes of conduct included a discussion of freedom of expression.**

However, consistent with federal law that exempts from First Amendment protection any expression that meets the Title VI behavioral threshold for harassment and is directed at an individual because of his or her membership in a legally protected class, **more than half of the schools in the study (58) admitted in either their harassment or free speech policies that protected class harassment is not considered free speech.** For example:

- Rochester University's "Policy Prohibiting Discrimination, Harassment and Retaliation" states: "Protecting these values [of free speech], however, does not include protecting acts of discrimination or harassment."
- The harassment policy¹⁶ shared by California Polytechnic State University and California State University Northridge states: "Conduct that violates this Nondiscrimination Policy,

¹⁴ In California, the Leonard Law provides First Amendment protections to private postsecondary institutions.

¹⁵ <https://www.rit.edu/academicaaffairs/policiesmanual/c060>

¹⁶ "CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation (Nondiscrimination Policy)": <https://calstate.policystat.com/policy/10926024/latest/>

including statements that constitute Discrimination, Harassment, Sexual Harassment, Retaliation or Stalking, is not protected by academic freedom or freedom of expression.”

- Vassar College’s “Policy Against Discrimination and Harassment”¹⁷ states: “Vassar is dedicated to freedom of inquiry in the pursuit of truth and is vigilant in defending the right of individuals to free speech...However, discrimination and harassment are neither legally protected nor excused by reference to academic freedom or freedom of speech.”
- Muhlenberg College’s “Equal Opportunity and Nondiscrimination Policy,”¹⁸ which contains the school’s harassment policy, states: “While members of the College community may engage in expression that, at times, may be disagreeable, or even offensive, when that speech or expression crosses the thresholds of this EO Policy...it is no longer recognized as falling inside the bounds of academic freedom or otherwise protected speech.”
- UC Berkeley’s “Frequently Asked Questions on Free Speech”¹⁹ states: “Which types of speech are not protected by the First Amendment? ... Harassment in an educational institution aimed at an individual on the basis of a protected characteristic (race, gender, sexual orientation, religion); that is also pervasive and severe; is a direct or implied threat to employment or education; or creates an intimidating, hostile and demeaning atmosphere. For example, posting racist messages on the dorm room of an African American student would be regarded as harassment and not speech protected by the First Amendment.”

On the other hand, **none of the codes of conduct examined in our study exempted harassing speech directed at “unprotected” students from a school’s free speech policy, and in fact nearly one-quarter (23) of the codes included statements explicitly noting that harassing expression directed at “unprotected” students would be considered free speech.** For example:

- The University of Central Florida’s “Rules of Conduct”²⁰ states: “Verbal, digital, or written abuse, threats, intimidation, coercion and/or other conduct that endangers the health, safety, or wellbeing of others, or which would place a reasonable person in fear of bodily injury or death. This definition, however, shall not be interpreted to abridge the rights of the University community to freedom of expression protected by the First Amendment of the United States Constitution and any other applicable law.”
- University of Denver’s “Student Code of Conduct”²¹ includes this note in the section on Abusive Behavior (including verbal abuse): “NOTE: This policy should not be construed, and will not be enacted, to deny any student the right of free speech and expression.”

¹⁷ <https://www.vassar.edu/sites/default/files/2021-07/admin-handbook-updated-06302021.pdf>

¹⁸ <https://www.muhs.edu/media/contentassets/pdf/about/deanst/studentguide/EqualOpportunityNondiscrimination-Policy.pdf>

¹⁹ <https://freespeech.berkeley.edu/frequently-asked-questions/>

²⁰ <https://goldenrule.sdes.ucf.edu/wp-content/uploads/sites/64/2022/11/2022-2023-Golden-Rule-Student-Handbook.pdf>

²¹ https://www1.ucdenver.edu/docs/librariesprovider122/health-and-wellness/cu-denver-student-code-of-conduct.pdf?sfvrsn=4d0ea7b9_6

- Washington University's "Student Conduct Code"²² states: "Nothing in this Code should be construed to limit the free and open exchange of ideas and viewpoints, even if that exchange proves to be offensive, distasteful, disturbing or denigrating to some."
- University of Massachusetts Amherst's "Code of Student Conduct"²³ states: "These provisions may not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly."
- University of Arizona's "Student Code of Conduct"²⁴ states: "Enforcement of this Student Code of Conduct is subject to applicable law, including constitutional protections for speech, association and the press."

The fact that there is a legal basis for the disparity between harassment policies and codes of conduct when it comes to determining the primacy of freedom of expression sets this policy inequality apart from those discussed in the previous section of this report. It also makes it the most formidable challenge to ensuring the protection of Jewish and pro-Israel students from anti-Zionist motivated harassment.

To understand why this is so, consider the example provided in the UC Berkeley statement, quoted above, about the types of speech that are not protected by the First Amendment. According to federal law, if racist messages posted on the dorm room of an African American student were to cross the behavioral threshold for harassment, they would be considered unprotected speech and subject to university sanction. Indeed, the school would be in clear violation of its obligations under Title VI of the 1964 Civil Rights Act, imperiling its crucial federal funding, if it did not prohibit and sanction such harassing expression, which makes an administrator's decision to respond promptly and vigorously to the incident a relatively easy one.

This would not be the case, however, if equally harassing messages denigrating a Jewish student's support for Israel were posted on the student's dorm room. Given the ambiguous status of anti-Zionist harassment under Title VI and the increasingly strident opposition from students and faculty to recognizing anti-Zionism as a form of anti-Jewish bigotry,² a university administrator is more likely to feel compelled to comply with the First Amendment and declare anti-Zionist expression "free speech" than to identify the behavior as harassment prohibited under Title VI and to sanction it.

The fact that there is a legal basis for the disparity between harassment policies and codes of conduct when it comes to determining the primacy of freedom of expression... makes it the most formidable challenge to ensuring the protection of Jewish and pro-Israel students from anti-Zionist motivated harassment.

²² <https://wustl.edu/about/compliance-policies/academic-policies/university-student-judicial-code/>

²³ https://www.umass.edu/dean_students/sites/default/files/documents/07.01.2019%20Code%20of%20Student%20Conduct.pdf

²⁴ <https://public.azregents.edu/Policy%20Manual/5-308-Student%20Code%20of%20Conduct.pdf>

Towards a Solution



In light of the significant disparities between how “protected” and “unprotected” students are treated under their schools’ policies, it is clear that efforts to obtain equal and adequate protection for Jewish students must be directed in one of two ways: either to ensuring that Jewish students are guaranteed “protected” status even when the harassment they’re experiencing is motivated by anti-Zionism, or to ensuring that all students—even those who are deemed “unprotected” by school policy or state and federal law—are afforded identical treatment to “protected” students when it comes to university policy and enforcement.

For the last several years, a number of organizations in the Jewish communal sector have devoted significant effort to using anti-discrimination law such as Title VI of the 1964 Civil Rights Act to ensure that Jewish students are recognized and treated exactly as any other “protected class” group. This approach has the advantage of being rooted in well-established law with a robust federal enforcement mechanism. However it also faces significant challenges, chief among them prevailing notions about which groups deserve protected class status and which do not, the complexity of Jewish identity and difficulty of pigeon-holing it in current identity-based frameworks, as well as the dramatic increase in attacks on Jewish identity and the portrayal of Jewish and Zionist students as privileged oppressors ineligible for “protected class” status.

This approach may also contribute to an unhealthy competition for protected status, and resentment on the part of students who are not afforded the same protection from harassment and

An alternative approach, which starts with the understanding that all students, including Jewish students, have a constitutional right to be equally and adequately protected from behavior that takes away their own freedom of expression, should also be pursued.

irrespective of the motivation of the perpetrator or the identity of the victim. Such an approach can be implemented immediately by universities and would ensure that Jewish students receive equal and adequate protection from anti-Zionist harassment. In a campus climate intensely obsessed with identity politics, it can also help nurture a healthier, less competitive environment where all students can thrive.

How could such an approach be translated into school policy? Harvard University offers a promising answer to that question.

HARVARD UNIVERSITY'S PROPOSED NON-DISCRIMINATION AND ANTI-BULLYING POLICIES

Although Harvard University is on the list of top schools for Jewish students designated by Hillel International, it was not included in our study because, while the school does have a publicly accessible sexual harassment policy, it does not have a publicly accessible non-sexual or gender-based harassment policy. Last year, however, in an effort to make sure that each member of the Harvard community could "feel safe to participate fully in the life of the University,"²⁵ the Provost convened a steering committee and working groups made up of faculty, students and staff that were tasked with recommending "University-wide policies and procedures to deal with other forms of harassment...including but not limited to race and ethnicity discrimination, and abusive and intimidating conduct."²⁶

Of particular relevance to our investigation are the steering committee's recently released draft Non-Discrimination Policy, which includes a definition and prohibition of "discriminatory harassment," and draft Anti-Bullying Policy, which were both contained in a document entitled "Toward

²⁵ <https://provost.harvard.edu/university-discrimination-and-harassment-policy-review-january-2021>

²⁶ https://communitymisconductpolicies.harvard.edu/files/policyworkinggroups/files/final_steering_committee_report.pdf?m=1649266842

a Community in Which All Can Thrive.”²⁷ Despite having been written by separate working groups, these draft policies are clearly intended to reflect the understanding that the behaviors covered under the Non-Discrimination Policy and the Anti-Bullying Policy are similar if not identical and should be addressed as similarly as possible by university administrators:

- Both draft policies employ a nearly identical, Title-VI compliant threshold for determining when “hostile” or “abusive” words or actions become “discriminatory harassment” or “bullying” prohibited under their respective policies:
 - Draft Non-Discrimination Policy: “Discriminatory harassment may be considered to violate this policy when it is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive or, in the education context, would consider as sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of a student to participate in or benefit from the institution’s programs and activities.”
 - Draft Anti-Bullying Policy: “For a violation of the Policy to occur, such aggression [by words or actions] must be sufficiently pervasive, persistent, and/or severe that a reasonable person would find that it creates an educational, work, or living environment in which a person is unreasonably excluded from participation in or denied the benefits of the University’s educational or work programs or activities.”
- In detailing their respective responses to complaints, both draft policies employ an identical set of “Governing Principles” in the interest of “providing a fair process, preserving privacy, and preventing retaliation.” These include commitments to impartiality, fair process, privacy, presumed innocence, transparency, and timeliness.
- While the draft Non-Discrimination Policy does not address the issue of freedom of expression, the draft Anti-Bullying Policy does, and in a way that serves to equalize how the two policies interact with Harvard’s “enduring commitment to academic freedom and free inquiry...and the free exchange of ideas, beliefs, and opinions, however unpopular.” Instead of seeing the relationship between harassing behavior and freedom of expression as antagonistic—as is true of the policies of almost every other school in the study—the draft Anti-Bullying Policy explains that bullying itself is inimical to freedom of expression and must be prohibited for that reason: “This Anti-Bullying Policy...seeks to promote an educational and work environment where academic freedom and freedom of expression are upheld for all members of the Harvard community...bullying and hostile and abusive behavior...directly threaten the ability of community members to engage in the free exchange of ideas and pursue their educational and professional goals.”

Harvard’s draft policies guarantee “unprotected” students the administrative consideration of and

²⁷ https://communitymisconductpolicies.harvard.edu/files/policyworkinggroups/files/draft_nondiscrimination_and_antibullying_policies_april_2022_0.pdf?m=1649267002

We hope Harvard will adopt these policies and that they can serve as examples for other colleges and universities to emulate.

response to harassing behavior equivalent to that granted “protected” students. Policies like these have the best chance of affording Jewish and pro-Israel students who fall victim to anti-Zionist motivated harassment equal and adequate treatment, no matter whether the harassment is deemed to fall under the schools’ harassment policy or anti-bullying policy. As such, we hope Harvard will adopt these policies and that they can serve as examples for other colleges and universities to emulate.

RECOMMENDATIONS

Based on the results of our investigation, we offer the following recommendations to school administrators, college and university consumers, and state and federal legislators:

1. Administrators should establish policies that treat harassing behavior **equally** for **all** students, **irrespective of the motivation of the harasser or the identity of the victim**. In particular, these new policies and their enforcement should involve:
 - A behavioral definition of harassment that is **identical** to the definition used in their school’s harassment policy. We recommend the definition used by the U.S. Department of Education in adjudicating Title VI cases, as cited above, which requires the establishment of objective standards for determining the extent to which the behavior in question interferes with or limits the victim’s ability “to participate in or benefit from the services, activities or privileges” of their school.
 - A clearly stated commitment to addressing harassing behavior promptly, thoroughly and fairly, irrespective of the motivation of the perpetrator or the identity of the victim.
 - Punitive sanctions for harassing behavior directed against “unprotected” students that are identical to those imposed on the perpetrators of harassment directed against members of identity groups protected under the school’s harassment policy.
 - A guarantee of protection from retaliation that is as clearly articulated and robust as the retaliation protection afforded under the school’s harassment policy.
 - An acknowledgement that expression which meets the federal behavioral threshold for harassment also suppresses the freedom of expression of its victims, and the establishment of a single standard for judging and responding to verbal harassment that does not depend on the motivation of the perpetrator or the identity or legally protected status of the victim.

2. University consumers (students and parents) and donors must demand equal and adequate protection for **all** students from harassing behavior that threatens their safety and impedes their full participation in campus life, and condition decisions regarding the school on whether administrators can guarantee such fundamental protection.
3. Legislators should consider new legislation, similar to Title VI of the Civil Rights Act, that establishes a clear legal process and robust government enforcement mechanisms for ensuring that **all** students in state and federally funded schools are equally and adequately protected from harassing behavior that would “interfere with or limit the ability of a student to participate in or benefit from the services, activities or privileges provided by the recipient [of state or federal funds].”

About the Researchers

LEILA BECKWITH is Professor Emeritus at UCLA and the co-founder of AMCHA Initiative. After receiving her Ph.D. from the University of Chicago, Beckwith went on to teach and do statistical research for more than 30 years at the Neuropsychiatric Institute and the Department of Pediatrics at UCLA. She has published more than 80 research publications in scientific, peer-reviewed journals. She is a board member of the California Association of Scholars and Scholars for Peace in the Middle East. A renowned scientist and researcher, she has been an editorial board member of *Child Development*, *Infant Behavior and Development*, and the *Infant Mental Health Journal*, as well as an ad hoc reviewer for research papers submitted to *Developmental Psychology*, and grants submitted to the National Science Foundation and the National Foundation for the March of Dimes. Beckwith served as an appointed member of research review committees for the National Institute of Mental Health, the National Institute of Drug Abuse and the National Institute of Child Health and Development. She was also a prevention research advisory committee member for the National Institute of Mental Health and a principal investigator for research grants from the National Institute of Mental Health, the National Institute of Child Health and Development, and the Center for Disease Control.

TAMMI ROSSMAN-BENJAMIN is co-founder and director of AMCHA Initiative, and was a faculty member in Hebrew and Jewish Studies at the University of California from 1996–2016. Rossman-Benjamin has written articles and reports about academic anti-Zionism and antisemitism and lectured widely on the growing threat to the safety of Jewish students on college campuses. She has presented her research in scholarly talks and academic conferences at several universities, including Indiana University, the Hebrew University of Jerusalem, Harvard University and McGill University. Rossman-Benjamin's research has been featured in several volumes on antisemitism. Articles and opinion pieces from Rossman-Benjamin have been published in *Newsweek*, *The Hill*, *New York Daily News*, *Los Angeles Daily News*, *San Jose Mercury News*, *Sacramento Bee*, *Contra Costa Times*, *Jewish Journal of Los Angeles*, and dozens of others.

Appendix

Colleges and University in the Study

- American University
- Arizona State University
- Barnard College
- Bentley University
- Binghamton University
- Brandeis University
- Broward College
- Brown University
- California Polytechnic State University, SLO
- California State University
- Carnegie Mellon University
- Chapman University
- Claremont Colleges - Claremont-McKenna
- Claremont Colleges - Harvey Mudd
- Claremont Colleges - Pitzer
- Claremont Colleges - Pomona
- Claremont Colleges - Scripps College
- Clark University
- Columbia University
- Cornell University
- CUNY, Baruch College
- CUNY, Brooklyn College
- CUNY, College of Staten Island
- CUNY, Hunter College
- Dartmouth College
- DePaul University
- Drexel University
- Duke University
- Elon University
- Emerson College
- Emory University
- Florida Atlantic University
- Florida International University
- Florida State University
- George Washington University
- Georgetown University
- Hofstra University
- Indiana University
- Ithaca College
- James Madison University
- Lehigh University
- Long Island University, Brooklyn
- Michigan State University
- Muhlenberg College
- New York University
- Northeastern University
- Northwestern University
- Oberlin College
- Ohio State University
- Pace University
- Pennsylvania State University
- Princeton University
- Queens College
- Quinnipiac University
- Rochester Institute of Technology
- Rutgers University
- Skidmore College
- Stanford University
- Stony Brook University
- Syracuse University
- Temple University
- The New School
- Towson University
- Tufts University
- Tulane University
- University at Albany
- University of Arizona
- University of California, Berkeley
- University of California, Davis
- University of California, Los Angeles
- University of California, Santa Barbara
- University of California, Santa Cruz
- University of Central Florida
- University of Chicago
- University of Colorado at Boulder
- University of Connecticut
- University of Delaware
- University of Denver
- University of Florida
- University of Illinois at Urbana-Champaign
- University of Kansas
- University of Maryland
- University of Massachusetts, Amherst
- University of Michigan
- University of Minnesota
- University of Oregon
- University of Pittsburgh
- University of Rochester
- University of South Florida
- University of Southern California
- University of Texas, Austin
- University of Vermont
- University of Washington
- University of Wisconsin
- Vanderbilt University
- Vassar College
- Virginia Tech
- Wake Forest University
- Washington University
- Yale University