permitted to remain in his position as a teaching fellow for a first-year Civil Procedure course

campus. Harvard had cautioned students that "tents and tables[] are not permitted in the Yard without prior permission," and that "[s]tudents violating these policies are subject to disciplinary action." Id. ¶ 250. Despite the warnings, Harvard did nothing to stop "[p]eople with backpacks, tents, suitcases, and carts" from descending on the Yard on April 24 to create a tent encampment. Id. The encampment was left undisturbed until May 14, when Interim President Alan Garber negotiated with leaders of the encampment over the terms of vacating the Yard. In exchange for an end to the encampment, Garber instructed

is based on an individual or group's protected status."

Inst. of Am., Inc. v. Assoc. Dry Goods Corp.

claims are "necessarily individualized." Mem. of Law in Supp. of Def.'s Mot. to Dismiss & Mot. to Strike Pls.' Second Am. Compl. (Mot.) (Dkt. # 74) at 12. Even if true, this does not preclude associational standing because the requested relief will "inure to the benefit of those members of the association actually injured." Warth , 422 U.S. at 515.

damages claims, however, depend entirely on past events, so they are ripe.

The parties agree that Title VI protects Jewish students from harassment, and discrimination based on actual or perceived Israeli identity is of course discrimination based on national origin.

Deliberate Indifference .se1.103.581( )Tj-0.002 Tc 9.033 T1-

An institution is deliberately indifferent to student-on-student harassment if its response to the mistreatment is “

StandWithUs Ctr. for Legal Just. v. Mass. Inst. of Tech. , 2024 WL 3596916, at *4 (D. Mass. July 30, 2024). In short, plaintiffs must plead that the school "either did nothing or failed to take additional reasonable measures after it learned that its initial remedies were ineffective." Porto v. Town of Tewksbury , 488 F.3d 67, 73 (1st Cir. 2007).

A deliberate indifference claim has five elements: (1) plaintiffs were "subject to 'severe, pervasive, and objectively offensive' . . . hTJ0PSo Td( )ksbury

As to the fifth element, Harvard first argues that it could not, or at least is not legally required to, infringe on protected First Amendment activity. It may be true that, as a policy matter, Harvard has elected not to curtail the protests in the interest of protecting free speech (although as a private institution, it is not constitutionally required to do so). The court consequently is dubious that Harvard can hide behind the First Amendment to justify avoidance of its Title VI obligations.[11] At any rate, whether this argument has any teeth is a decision best reserved for a later day. The record is too thin to determine whether Harvard in fact acted to protect free speech rights as it contends Title VI required it to do and whether the protest activity itself comes within the protections of the First Amendment.

[11] The parties and amicus Foundation for Individual Rights and Expression (FIRE) helpfully briefed the legalities of the speech issue in depth, but their briefing only highlights why the issue should not be decided at this stage. FIRE characterizes Davis as the only Supreme Court case squarely on point. See Amicus Curiae Br. of FIRE in Supp. of Neither Party (FIRE Br.) (Dkt. # 87) at 7-8. But, as Justice Kennedy noted in his dissent in Davis, the majority opinion did not come to grips with the "obvious [First Amendment] limits on a university's ability to control its students." Davis, 526 U.S. at 667-668 (Kennedy, J., dissenting). Indeed, the majority opinion in Davis did not mention the First Amendment even once. Further, Davis involved a public school, to which the First Amendment unquestionably applies. FIRE may be correct that it "cannot be that the federal government could require private universities to enforce policies against speech that the government itself could not enforce at a public middle school," FIRE Br. at 8, but the court is reluctant to make such a determination now.

Interim President Garber repeatedly publicly recognized as an eruption of antisemitism on the Harvard campus. Indeed, in many instances, Harvard did not respond at all. To conclude that the SAC has not plausibly alleged dfhfh0 Td[

response is "so lax, so misdirected, or so poorly executed as to be clearly unreasonable under the known circumstances." Fitzgerald , 504 F.3d at 175. The facts as alleged in the SAC plausibly establish that Harvard's response failed Title VI's commands.

Direct Discrimination

Plaintiffs' second theory is that, when compared to its response to other forms of discrimination, Harvard's enforcement of its policies against antisemitic speech and conduct evinces an "invidious double standard." Opp'n at 27. The "comparator" argument allows plaintiffs to prove discriminatory intent "based on 'evidence of past treatment toward others similarly situated.'"[12] Doe v. Brown Univ. , 43 F.4th 195, 207 (1st Cir. 2022), quoting Dartmouth Rev. v. Dartmouth Coll. , 889 F.2d 13, 19 (1st Cir. 1989). "[T]he mere existence of disparate treatment—even widely spread disparate treatment—does not furnish [an] adequate basis for an inference that the discrimination was racially motivated." Dartmouth , 889 F.2d at 21. Rather, the circumstances of the comparator cases must be "'reasonably comparable'

[12] Plaintiffs suggest that they "do far more" than allege reasonable comparators because "they allege that the way Harvard responds to antisemitic acts is a fortiori worse than the treatment Harvard has accorded other discrimination." See Opp'n at 27. To the extent plaintiffs mean to argue that their claim is an atypical and more sophisticated version of the comparator argument, the claim is rejected as underdeveloped.

student claims that a private academic institution breached a contract, the inquiry is "whether the reasonable expectations" – meaning what "the school

receiving a complaint," to "engage in a preliminary consultation about the claim asserted." Id. § VI.C.1. Within 14 business days of receiving a formal complaint, Harvard must perform an "initial review," "determine if, on the face of the complaint, it alleges a violation of applicable policy and warrants an investigation," and "communicate[] in writing to the complainant . . . [t]he decision (either to dismiss or accept the complaint)." Id. § VI.C.2.

Plaintiffs identify at least two examples of Harvard failing to follow this procedure.[16] See, e.g., SAC ¶¶ 77, 153. In one instance, SAA Member # 4 formally complained after a professor required that students read articles "propagating antisemitic claims and Hamas propaganda." Id. ¶ 77. The student met with Harvard's Chief Diversity, Inclusion, and Belonging Officer the same month, but Harvard never notified him of its decision whether to dismiss or accept his complaint. See id. In the other instance, SAA Member # 1 filed a formal complaint with the Dean of Students on October 12, 2023, about the conduct of his Civil Procedure teaching fellow. See id. ¶ 153. SAA Member # 1 met with Harvard's Assistant Director of Student Life, but SAA

Member # 1 never heard from anyone at Harvard regarding his complaint after the meeting. See id. These instances suffice to state a breach of contract claim.

For their implied covenant claim, plaintiffs allege that Harvard selectively enforces the Policies. As detailed above, the FAC alleges several instances in which students were penalized for violating various Harvard policies, but the students allegedly engaged in antisemitic conduct have not faced any discipline. Although these instances are insufficient to state a Title VI claim, they sketch a claim that Harvard breached the implied covenant by failing to evenhandedly administer its policies. See Sonoiki, 37 F.4th at 715-716.

Motion to Strike

The court may strike from a pleading any "redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Motions to strike are "disfavored" and "rarely granted." Boreri v. Fiat S.p.A., 763 F.2d 17, 23 (1st Cir. 1985); Hayes v. McGee, 2011 WL 39341, at *2 (D. Mass. Jan. 6, 2011). Harvard moves to strike plaintiffs' requests for injunctive relief. While many of these requests

as a remedy should SAA prevail in this case, the court sees no reason at this time to strike the prayer.[17] The motion to strike will thus be denied.

ORDER

For the foregoing reasons, Harvard's