

Brooklyn College Title VI Quick Reference Guide

Office of Legal Affairs and Labor Relations

Office of Diversity and Equity

Given the conflict in the Middle East and nation-wide rise in hate crimes and harassment, the U.S. Department of Education Office for Civil Rights (“OCR”) has issued updated guidance concerning the responsibilities of colleges and universities to ensure nondiscriminatory educational environments as required by Title VI of the Civil Rights Act of 1964.¹ This Quick Reference Guide provides Brooklyn College faculty with an overview of these legal requirements and an explanation of their concomitant responsibilities as members of the faculty.

Discrimination is Prohibited. Title VI requires colleges, universities, and all schools that receive federal financial assistance, including Brooklyn College, to provide all students with an educational environment free from discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics. Discrimination prohibited on this basis includes discrimination based on the perception that an individual is Jewish, Israeli, Muslim, Arab, or Palestinian.²

Harassment is Prohibited. Title VI also prohibits harassment based on race, color, or national origin, including shared ancestry or ethnic characteristics. Harassing conduct can be verbal or physical and is prohibited where, based on the totality of the circumstances, it is (1) subjectively and objectively offensive, and (2) severe or pervasive such that it limits a person’s ability to participate in or benefit from an educational program or activity. For example, OCR has identified Title VI concerns in cases involving Jewish students subjected to anti-Semitic threats, slurs, and assaults; Muslim students targeted for wearing a hijab; and Middle Eastern and Sikh students taunted and called terrorists.³

¹ See U.S. Department of Education Office for Civil Rights Dear Colleague Letter of November 7, 2023.

² See *v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 354-55 (S.D.N.Y. 2014) (giving deference to U.S. Department of Education Office for Civil Rights guidance in holding that discrimination based on shared ancestry and ethnic characteristics is prohibited by Title VI).

³ See U.S. Department of Education Office for Civil Rights Questions and Answers on Executive Order 13899 (Combating Anti-Semitism) and OCR’s Enforcement of Title VI of the Civil Rights Act of 1964, January 19, 2021.

The same concerns would arise if Muslim or Middle Eastern students were subjected to threats, slurs, or assaults or if a Jewish student was targeted for wearing a yarmulke. In order to constitute unlawful harassment, the conduct must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive. Under OCR's standard, the conduct must also be considered sufficiently serious to deny or limit a student's ability to participate in or benefit from the educational program.⁴

Examples of Prohibited Conduct. The following are examples of incidents that should be reported to the Office of Diversity and Equity as potential violations of Title VI:⁵

(1) A Jewish student reports to a professor that the student feels unsafe at school because classmates routinely place notes with swastikas on the student's backpack, blame the student for the war in Gaza, and accuse the student of genocide.

(2) Students report concerns about comments made by classmates during history and cultural lessons related to Sikhism, Islam, and other traditions prevalent in South Asia. Muslim students describe, for example, being told by peers in class that "you started 9/11," and being called "terrorists" and "members of Hamas." They wish to withdraw from the class.

Who Decides?

Determining whether a particular incident rises to the level of unlawful discrimination or harassment requires a legal analysis of the specific circumstances of each case. This analysis relies on the review of guidance from federal and state administrative authorities and developments in decisional law. For this reason, all incidents of possible discrimination or harassment should be immediately referred to the Office of Diversity and Equity for review. Individual faculty members are not required to determine whether allegations rise to the level of a violation of law or policy, and they should refrain from doing so.

Our Responsibility.

Brooklyn College is home to one of the most diverse student bodies in the country. We pride ourselves in providing a transformative and distinctive education to students from all backgrounds. Our faculty devote considerable time and effort to cultivating an environment where all our students can succeed. Unlawful discrimination and harassment undermine those efforts, and we need your help to combat it. The College is legally required to address all allegations of discrimination and harassment as

⁴ See U.S. Department of Education Office for Civil Rights First Amendment Dear Colleague Letter, July 28, 2003.

⁵ See U.S. Department of Education Office for Civil Rights FACT SHEET: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics, January 2023.

described herein. Please report all instances of alleged discrimination or harassment to the Office of Diversity and Equity as soon as you become aware of them.

Resources.

The National Center on Safe Supportive Learning Environments has compiled a list of resources to support colleges and universities in their efforts to cultivate campuses that are safe, tolerant, and supportive of students' physical and mental well-being. Included in these resources is information on how to prevent discrimination, and confront and counteract antisemitism and Islamophobia. We invite you to review them⁶

Questions?

If you have any questions about the content of this memorandum, please contact the Office of Legal Affairs and Labor Relations at (718) 951-3118 or the Office of Diversity and Equity at (718) 951-4128.

⁶ This list of resources is available here: <https://safesupportivelearning.ed.gov/the/promoting-religious-inclusion-campuses>