


**Memorandum**

To: Suzanne Laychock, Chair, Faculty Senate  
From: Satish K. Tripathi, President   
Date: April 22, 2025  
RE: Faculty Senate Resolution: To Request Clarification from UB's Administration Regarding its Title VI Policies

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I offer the following in response to the Faculty Senate Resolution: "To Request Clarification from UB's Administration Regarding its Title VI Policies."

In consultation with the Director of Equity, Diversity, and Inclusion and UB's Chief Campus Counsel, it has been confirmed that there have been no changes to UB's policies related to Title VI, including those concerning the handling of anonymous complaints. Allow me to emphasize that UB does not have a standalone Title VI policy; rather, Title VI is addressed within broader institutional policies.

Before this resolution was presented to the Faculty Senate, the CAFR Committee requested clarification regarding Title VI policies. This clarification included 11 posed questions that subsequently were thoughtfully and thoroughly answered by Sharon Nolan Weiss, UB's Title VI Officer and Director of Equity, Diversity, and Inclusion (please see attached document).

I respectfully suggest that the Chair of the Faculty Senate share the attached document provided by Sharon Nolan Weiss, UB's Title VI Officer and Director of Equity, Diversity, and Inclusion with the Faculty Senate. The attached document provides comprehensive responses to each of the questions posed by the Senate.

I sincerely hope that this response provides the Faculty Senate with the clarification they are seeking.

Attachment

## RESOLUTION TO Request Clarification from UB's Administration Regarding its Title VI Policies

To: Faculty Senate

From: Faculty Senate Committee on Academic Freedom and Responsibility (CAFR)

Date proposed to FSEC: February 11, 2025

Date approved by the FSEC for transmittal to Faculty Senate: February 11, 2025

Date approved by the Faculty Senate: 3/25/2025

### RATIONALE:

Whereas, the CAFR is charged with reviewing, reporting and recommending to the Faculty Senate matters concerning policies, procedures, and actions within the university regarding academic freedom and academic responsibility;

Whereas, in response to an increase in complaints filed with the Department of Education's Office of Civil Rights (OCR) under Title VI of the Civil Rights Act, the Department of Education issued a "Dear Colleague" letter on May 7, 2024, that broadly defines a university's obligations to address a hostile environment, including by policing and responding to students' social media;

Whereas, prominent legal scholars have expressed concern that, in the letter and in its other guidance, OCR is compelling universities to discipline student and faculty speech in ways that violate the First Amendment;

Whereas, there are concerns that UB has made unpublicized changes to its Title VI policies, such as requiring schools to implement mechanisms for students to anonymously report their professors and other members of the UB community for Title VI violations;

Whereas, there may be significant due process flaws with UB's Title VI policies as currently implemented, including a lack of clarity regarding when a faculty member is made aware of a complaint against them and at what point in the investigation the faculty member is advised or even permitted to have an advocate speak on their behalf;

Whereas, New York's Freedom of Information Law raises the risk that even unfounded complaints may become public, seriously harming a faculty member's reputation;

Whereas, there is a lack of clarity surrounding changes that UB may have made to its Title VI enforcement practices in response to the Department of Education's "Dear Colleague" Letter;

## RESOLUTION:

Therefore, be it resolved that the Faculty Senate requests clarification from the UB Administration regarding its Title VI policies by supplying written responses to the following questions:

1. *What changes has the University made to its Title VI policies since the Department of Education's Dear Colleague Letter of May 7, 2024, including but not limited to the introduction of anonymous reporting mechanisms?*

ANS: UB does not have a stand-alone Title VI Policy. The anonymous reporting mechanism for UB is Ethics Point, which has been in use at UB for several years and has not been revised in response to the DOE Dear Colleague Letter of May 7, 2024.

- There have been no changes to UB's policies regarding Title VI. As stated in EDI's webpage on Combatting Racism, Islamophobia, and Antisemitism, these issues are handled in accordance with UB's Discrimination and Harassment Policy. Changes to the Discrimination and Harassment Policy are listed in the "Policy Revision History" at the bottom of the policy.
  - There have been no changes pertaining to anonymous complaints. The policy language regarding anonymous complaints states, "Individuals may contact EDI anonymously, either for consultation or to report discrimination. It is important to note that due process considerations may limit the ability to investigate or resolve anonymous complaints."
2. *Is the University mandating the adoption of anonymous reporting processes? If so, what is the reason for this policy change?*

ANS: Ethics Point is UB's anonymous reporting process. There have been no policy changes, nor have any additional anonymous reporting processes been mandated.

- There have been no new UB-wide anonymous reporting mechanisms. UB has used EthicsPoint as a reporting tool for several years now. People can report anything anonymously through EthicsPoint - fraud, bullying, financial mismanagement, academic integrity issues, etc. People sometimes do make anonymous reports of discrimination or harassment through EthicsPoint. In these cases, we encourage the reporter to speak with EDI. If they do not, we have to determine whether we have a legal obligation to move forward and, if so, if there is any way to investigate or substantiate the assertions in the complaint. Unless there is independent verification of the alleged conduct (ex. video evidence or other tangible evidence), we cannot take disciplinary action.



- Some of the misunderstanding appears to be generated by the Provost's request that each school develop a webpage that explains reporting options for the following: unprofessional or inappropriate behavior, workplace violence and bullying, and discrimination and harassment. As background, the National Institutes of Health have made it clear that they have a no-tolerance policy for any of these behaviors. In the event of a complaint to NIH (or a complaint to any enforcement agency), it is helpful for UB to be able to demonstrate that we share information with our students and employees about how to report these behaviors. The reporting mechanisms are not new ones. The information simply highlights what is already existing.

3. *In what specific ways do the University's current Title VI policies reflect and incorporate its existing policies governing academic freedom for faculty?*

ANS: Please refer to UB's Discrimination and Harassment Policy. The definition of "Harassment" includes the following: "Engaging in speech or expression protected by the First Amendment is not a violation of the university's policies against discrimination and harassment." In order to be considered harassment, there must be conduct that "has the effect of subjecting the individual to inferior terms, conditions or privileges of employment or interferes with or limits the ability of an individual to participate in or benefit from the university's programs or activities." This is a high standard that goes beyond the right of faculty to "without limitation, discuss their own subject in the classroom."

4. *What is the University's plan to reconcile its obligations under Title VI, and especially under the Department of Education's May 7, 2024, Dear Colleague Letter, with its First Amendment obligations, its commitment to academic freedom, and its recent policy statement that it "respects and fully supports the rights of free speech guaranteed by the constitutions of the United States and the State of New York?"*

ANS: The University supports free speech. In order for UB to take action, the speech must rise to the level of prohibited harassment as defined by New York State law.

5. *What is the University's process when a complaint that implicates Title VI is made against a faculty member? In specific terms, what due process guarantees are provided to a faculty member who is accused of conduct that implicates Title VI?*

ANS: Investigations under the Discrimination and Harassment Policy are not disciplinary. The goal of the investigation is to ensure that UB is complying with laws, rules, and policies prohibiting discrimination and harassment. EDI's website includes information about the



investigatory process, including protections and rights for people reporting discrimination and harassment, people who are accused, and third-party witnesses to an investigation. Among the protections and rights are the opportunity to understand the allegations that were reported and to tell their side, to provide documentation and information, and to have someone accompany them to any meeting with EDI. If there is an issue that rises to the level of a potential disciplinary matter, EDI refers this to Employee Relations. Faculty have a number of rights in the disciplinary process, which is handled by ER.

6. *What policies and procedures are in place for a faculty member who experiences harassment or intimidation by a student?*

ANS: There would need to be a formal charge of harassment, and a report made through the Student Conduct.

- In terms of students harassing faculty, UB's Student Code of Conduct includes Harassment as a basis for a conduct charge as well as the process for handling student misconduct. Student Life has a Behavioral Expectations in the Learning Space webpage with helpful information. Student Conduct will also consult with faculty for any behaviors and communications outside of learning spaces. For discriminatory behaviors that fall short of disciplinary action, faculty can also report students to EDI. Importantly, however, free speech protections apply to students. There have been situations where EDI or Student Conduct has been asked by faculty to discipline students for exercising free speech rights that fall outside of the definition of Harassment, or to punish students for making discrimination complaints against faculty. The former would violate the First Amendment, and the latter would also be considered retaliation.

7. *Would there be any circumstances, in the context of a Title VI complaint or otherwise, under which the University might investigate a faculty member's social media postings, scholarship, and public advocacy? If so, what constitutes such circumstances?*

ANS: UB does not monitor the social media activities of employees or students.

- UB's policies governing freedom of expression, academic freedom, and records retention are unchanged. We do not monitor the social media activities of employees or students. Sometimes, we do receive complaints about what someone has said on social media. There is a prepared script for most of these, as they involve First Amendment-protected speech. The U.S. Department of Education's Office for Civil Rights has a First Amendment Dear Colleague Letter that is commonly cited. For employee speech, we need to balance First Amendment protections with the impact of the speech. Under the First Amendment, UB can act on employee speech that is "disruptive to the efficient



operations of the workplace." The Director of UB's EDI will confer with SUNY Counsel and Employee Relations in these cases, since they are usually fact specific.

8. *At what point does the University notify a faculty member that a complaint has been filed against them and that a Title VI investigation is underway?*

ANS: The EDI website describes the investigatory process. The respondent is entitled to due process, including knowledge of the specific allegation(s) against them and an opportunity to respond. No presumption of wrongdoing will be made absent factual evidence. EDI will notify the faculty member when a complainant has indicated they wish to move forward with an investigation.

9. *How does the University define "disciplinary action" against a faculty member in the Title VI context, and what rationale supports this definition?*

ANS: The definition of 'disciplinary action' is defined in the UUP contract Article 19.

10. *What procedures and document retention policies are in place to ensure that the University does not unnecessarily retain documents that could damage the reputations of faculty members accused of conduct implicating Title VI, particularly given the University's obligations to publicly release documents under New York's Freedom of Information Law?*

ANS: UB does retain documents in the EDI office pertaining to all discussions and complaints whether actionable or not. Rules about what can be released are included under NY's Freedom of Information Law (FOIL).

11. *What procedures are in place for expunging a faculty member's record of complaints and findings against them after a reasonable period of time?*

ANS: Records are retained for 7 years, after which they are expunged. Records archived by EDI do not appear in a faculty member's personnel file or anywhere outside of EDI.



## APPENDIX

This appendix provides background for the resolution requesting clarification on the University's changes to its enforcement of Title VI of the Civil Rights Act. In investigating these changes, the CAFR has come to the understanding that the University may have recently required each of its decanal units to develop procedures for students to anonymously report complaints against faculty members. Such a development, combined with the nationwide increase in the use of Title VI to discipline faculty and student speech, raises concerns that the University could compromise academic freedom with an overly aggressive interpretation of its Title VI obligations.

[Title VI of the Civil Rights Act](#) prohibits universities receiving federal funding from discriminating based on race or national origin.<sup>1</sup> Under Title VI, universities can be held liable if they treat students differently on the basis of race or national origin. More significantly for our purposes, universities can also be liable for fostering a “hostile educational environment” by “fail[ing] to respond appropriately to racial or national origin harassment that is so severe, pervasive, and objectively offensive that it deprives students of access to educational benefits or opportunities.”<sup>2</sup>

The Department of Education's Office for Civil Rights (OCR) has broad authority to enforce Title VI in educational settings. It issues formal regulations and guidance concerning Title VI's interpretation and enforcement. OCR also conducts reviews and investigates complaints under Title VI. If OCR finds a violation, OCR can seek remedies and, as a last resort, terminate federal funding “after making a finding of noncompliance on the record of a formal administrative hearing and giving Congress a chance to weigh in.”<sup>3</sup>

Since the attack of October 7, 2023, there has been an unprecedented increase in the number of Title VI complaints filed with OCR.<sup>4</sup> The threshold for filing a complaint with OCR is a low—anyone can submit one, irrespective of whether they are the victim of or witnessed a Title VI violation. Reports suggest that many complaints originate from a handful of third-party

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<sup>1</sup> Congressional Research Service, Religious Discrimination at School: Application of Title VI of the Civil Rights Act of 1964 (Updated Sept. 17, 2024) 1, <https://crsreports.congress.gov/product/pdf/LSB/LSB11129> (hyperlinked above).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 2.

<sup>4</sup> See Alex Kane, *The Civil Rights Law Shutting Down Pro-Palestine Speech*, Jewish Currents (Nov. 15, 2024), <https://jewishcurrents.org/civil-rights-law-pro-palestine-speech-israel-trump> (“Amid the influx of new Title VI complaints, the OCR has opened an unprecedented 153 “shared ancestry” investigations—the category that encompasses cases of antisemitism as well as those of anti-Palestinian, anti-Arab, and anti-Muslim discrimination—since October 2023, a fivefold increase over the number of cases opened during the first Trump administration.”)



organizations.<sup>5</sup> In response to the increase in complaints, the OCR issued a “Dear Colleague” letter on May 7, 2024.<sup>6</sup> The letter purports to “provide clarity to the public regarding existing legal requirements under Title VI.” However, the letter fails to provide such clarity.<sup>7</sup> While the letter offers examples of abhorrent antisemitic and Islamophobic actions that universities should not tolerate, the letter also defines broadly a university’s obligations to address a hostile environment, including by policing and responding to students’ social media.<sup>8</sup>

Legal scholars have expressed concern that, in the letter and in its other guidance, OCR is compelling universities to discipline student and faculty speech in ways that violate the First Amendment.<sup>9</sup>

In response to OCR Guidance, UB appears to have made unpublicized changes to its Title VI policies. For example, UB appears to be requiring schools to implement mechanisms for students to anonymously report their professors and other members of the UB community for Title VI violations. (The School of Dentistry has already implemented this anonymous reporting structure.)<sup>10</sup> There are also concerns that UB’s Office of Equity, Diversity, and Inclusion (EDI) has begun to enforce Title VI in ways that reflect OCR’s aggressive interpretation of university obligations when complaints are made against professors, but that conversely, EDI does very little when a faculty member alleges harassment by students.

There may be significant due process flaws with UB’s Title VI policies as currently implemented. It is not clear when a faculty member is made aware of a complaint against them, and at what point in the investigation the faculty member is advised or even permitted to have an advocate speak on their behalf. Furthermore, New York’s Freedom of Information Law raises the risk that even unfounded complaints may become public, seriously harming a faculty member’s reputation.

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

<sup>6</sup> See Dep’t of Education, Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics (May 7, 2024), <https://www.ed.gov/media/document/colleague-202405-shared-ancestry.pdf> (hereinafter “Dear Colleague Letter”).

<sup>7</sup> Kelly Field, The Education Dept. Tried to Draw a Line Between Free Speech and Discrimination. It’s Still Blurry (Chronicle of Higher Ed. May 28, 2024).

<sup>8</sup> See Dear Colleague Letter (note 6) at 3 & n.8.

<sup>9</sup> Evelyn Douek & Genevieve Lakier, *Title VI as a Jawbone*, Knight First Amendment Inst. at Columbia Univ. (Sept. 26, 2024), <https://knightcolumbia.org/blog/title-vi-as-a-jawbone>; Erwin Chemerinsky & Howard Gillman, *Federal Attempt to Combat Anti-Semitism Puts Universities in an Untenable Position | Opinion*, Sacramento Bee (Dec. 12, 2023), <https://www.yahoo.com/news/federal-attempt-combat-anti-semitism-140000957.html>. As a public university, the University at Buffalo must comply with the First Amendment. See *Healy v. James*, 408 U.S. 169 (1972).

<sup>10</sup> <https://dental.buffalo.edu/about-us/sdm-diversity-and-inclusion/reporting/students.html>.



Most troubling to the CAFR is the lack of transparency surrounding these changes. We simply do not know what changes UB has made to its Title VI enforcement practices in response to OCR's Dear Colleague Letter. Nor is it clear what due process protections are afforded to faculty. It is also unclear what measures the University takes to guard faculty against the public release of damaging information arising from a Title VI complaint, irrespective of whether the complaint is founded. The questions posed in this resolution are designed to elicit such information, and to do so in ways that require the University to respond to these concerns with an appropriate degree of specificity. In accordance with SUNY University Faculty Senate resolution #196-01-01, which was endorsed by the UB Faculty Senate, the UB administration is advised to seek "meaningful involvement of faculty and professional staff with relevant expertise" on these matters so that the university can best uphold its Title VI duties while protecting free speech and academic freedom.

By way of this resolution, the CAFR recommends that the Faculty Senate address the potential weaponization of Title VI, and the University's potential response thereto, for the following reasons:

1. The issue concerns the academic freedom of all UB faculty, including but not limited to those who exercise their right to protected speech in the classroom or in written work.
2. The Faculty Senate can serve as a necessary check against a university administration that fails to internalize the costs of being overly risk averse when faced with meritless Title VI claims or OCR guidance that violates the First Amendment.

Failing to address these concerns now could set a troubling precedent, making it more difficult to preserve academic freedom and due process in the future.



## RESOLUTION TO Request Clarification from UB's Administration Regarding its Title VI Policies

To: Faculty Senate

From: Faculty Senate Committee on Academic Freedom and Responsibility (CAFR)

Date proposed to FSEC: February 11, 2025

Date approved by the FSEC for transmittal to Faculty Senate: February 11, 2025

Date approved by the Faculty Senate: March 25, 2025

### RATIONALE:

Whereas, the CAFR is charged with reviewing, reporting and recommending to the Faculty Senate matters concerning policies, procedures, and actions within the university regarding academic freedom and academic responsibility;

Whereas, in response to an increase in complaints filed with the Department of Education's Office of Civil Rights (OCR) under Title VI of the Civil Rights Act, the Department of Education issued a "Dear Colleague" letter on May 7, 2024, that broadly defines a university's obligations to address a hostile environment, including by policing and responding to students' social media;

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Whereas, there may be significant due process flaws with UB's Title VI policies as currently implemented, including a lack of clarity regarding when a faculty member is made aware of a complaint against them and at what point in the investigation the faculty member is advised or even permitted to have an advocate speak on their behalf;

Whereas, New York's Freedom of Information Law raises the risk that even unfounded complaints may become public, seriously harming a faculty member's reputation;

Whereas, there is a lack of clarity surrounding changes that UB may have made to its Title VI enforcement practices in response to the Department of Education's "Dear Colleague" Letter;



## RESOLUTION:

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2. Is the University mandating the adoption of anonymous reporting processes? If so, what is the reason for this policy change?
3. In what specific ways do the University's current Title VI policies reflect and incorporate its existing policies governing academic freedom for faculty?
4. What is the University's plan to reconcile its obligations under Title VI, and especially under the Department of Education's May 7, 2024, Dear Colleague Letter, with its First Amendment obligations, its commitment to academic freedom, and its recent policy statement that it "respects and fully supports the rights of free speech guaranteed by the constitutions of the United States and the State of New York?"
5. What is the University's process when a complaint that implicates Title VI is made against a faculty member? In specific terms, what due process guarantees are provided to a faculty member who is accused of conduct that implicates Title VI?
6. What policies and procedures are in place for a faculty member who experiences harassment or intimidation by a student?
7. Would there be any circumstances, in the context of a Title VI complaint or otherwise, under which the University might investigate a faculty member's social media postings, scholarship, and public advocacy? If so, what constitutes such circumstances?
8. At what point does the University notify a faculty member that a complaint has been filed against them and that a Title VI investigation is underway?
9. How does the University define "disciplinary action" against a faculty member in the Title VI context, and what rationale supports this definition?
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11. What procedures are in place for expunging a faculty member's record of complaints and findings against them after a reasonable period of time?