



EQUAL OPPORTUNITY AND NONDISCRIMINATION POLICY

(For incidents of protected class discrimination and harassment, sexual harassment, intimate partner violence, stalking, and retaliatory harassment)

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I. INTRODUCTION AND PURPOSE

Muhlenberg College (the “College”) is dedicated to providing a diverse, equitable, and inclusive educational and work environment for all students, faculty, and staff¹. The College has developed this policy, the Equal Opportunity and Nondiscrimination Policy (the “EO Policy”), to reaffirm this dedication.²

The EO Policy is also intended to comply with the following laws that regulate and prohibit certain kinds of discrimination in employment and at institutions that provide educational services: Titles IV, VI, and VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Campus Sexual Violence Elimination Act; Campus Sexual Assault Victims’ Bill of Rights; Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; Violence Against Women Act; Section 504 of the Rehabilitation Act; Age Discrimination Act of 1975; Titles I and II of the Americans with Disabilities Act; the Pennsylvania Human Relations Act; and, any other applicable federal, state, or local law governing equal opportunity and nondiscrimination.

II. DIRECTOR OF EQUITY & TITLE IX COORDINATOR

The Director of Equity and Title IX Coordinator at Muhlenberg College oversees implementation of this EO Policy.

Information about reporting options and confidentiality can be found in Section VIII of this EO Policy.

Reports or complaints made under the EO Policy and internal inquiries about the EO Policy and accompanying procedures may be made in person, by mail, by telephone, or by electronic mail to:

Lin-Chi Wang, J.D.
Director of Equity and Title IX Coordinator
Muhlenberg College
Office of Equity and Title IX
2400 Chew St.
Allentown, PA 18104
484-664-3562
Email: lin-chiwang@muhlenberg.edu

In addition to the Title IX Coordinator, the College has designated the following employees as “Officials with Authority” to institute corrective action under this EO Policy:

- Provost
- Vice President of Human Resources
- Vice President of Students Affairs

¹ For purposes of this policy and accompanying procedures, “staff” includes service personnel, administrative staff, and managers, as defined in the College’s Administrative Staff/Service Personnel and Manager Handbooks.

² Many sections of this EO Policy and definitions are modeled after the ATIXA One Policy, One Process Model Policy used with permission. 2018. TNG, LLC/ATIXA.

III. JURISDICTION

The EO Policy applies to all students³, faculty, and staff (“Community Members”) of Muhlenberg College.

The EO Policy applies when a Community Member engages in prohibited conduct under this EO Policy and:

- The conduct occurs on campus or on property owned, controlled, used, or managed by the College;
- The conduct occurs off-campus in the context of College employment, education, programs or activities, including but not limited to College-sponsored study abroad, internships, athletics, or other affiliated programs; and/or
- The conduct occurs off-campus or online outside the context of a College program or activity but affects a substantial interest of the College.

A “substantial interest” is defined to include:

- a) Any situation where it appears that the Respondent⁴ may present a danger or threat to the health or safety of self, others, or to the campus community;
- b) Any situation that significantly breaches the peace and/or causes social disorder on campus; and/or
- c) Any situation that significantly interferes with the operations of the College, e.g. a situation reasonably having an adverse effect on the College, any member of the College community, or affecting the stability and continuance of College functions.

Third parties⁵ who are not presently students, faculty, or staff of the College are not under the jurisdiction of this EO Policy, but can be subject to actions that limit or terminate their access to and/or involvement with the College and College programs and property if the College determines that the third party has engaged in conduct prohibited by this EO Policy.

Jurisdictional assessments are made by the Director of Equity and Title IX Coordinator in consultation with other appropriate officials of the College and/or legal counsel.

³ A person is considered a student from the time they are notified of their acceptance to Muhlenberg and submit their initial deposit until they have completed the required units, applied for candidacy, and received their diplomas, unless the person’s enrollment at the College is terminated for other reasons.

⁴ See Section VI for definition of “Respondent.”

⁵ A third party is an individual who is not a Community Member of the College (faculty, staff, or student). Examples of third parties include visitors, guests, contractors, alumni, or students from other institutions.

IV. POLICY STATEMENT ON EQUAL OPPORTUNITY AND NONDISCRIMINATION

Muhlenberg College is committed to providing an environment that is dignified and respectful of every member of its community. This EO Policy covers nondiscrimination in employment and access to educational opportunities. All Community Members are expected to conduct themselves in a manner that does not infringe upon the rights of others or otherwise limit, deprive, or deny educational or employment opportunities of any member of the campus community.

Muhlenberg College prohibits discrimination on the basis of:

- age,
- ancestry,
- color,
- disability,
- gender,
- gender identity,
- marital status,
- national or ethnic origin,
- race,
- religion,
- sex*,
- sexual orientation,
- veteran status, or
- any other basis protected by applicable federal, state, or local laws (“Protected Classes”).

*Discrimination on the basis of sex includes sexual misconduct, intimate partner violence, gender-based stalking, and the Title IX definition of sexual harassment.

Retaliatory harassment, defined below, against any individual who makes a report, provides information, or otherwise takes action pursuant to this EO Policy is prohibited.

When an allegation of a violation under this EO Policy is brought to the attention of the College, such allegation will be promptly and equitably addressed and remedied by the College according to the Student, Faculty, or Staff Equal Opportunity Complaint and Resolution Procedures (“EO Procedures”).

a. Sex Discrimination

Title IX of the Educational Amendments of 1972 prohibits discrimination on the basis of sex at institutions of higher education receiving federal financial assistance. The U.S. Department of Education, Office of Civil Rights, oversees enforcement of Title IX and defines discrimination on the basis of sex to include sex and/or gender-based discrimination and harassment, and sexual harassment.

On May 6, 2020, the U.S. Department of Education released a new rule under Title IX specific to one form of sex discrimination: sexual harassment. The new rule specifies the U.S. Department of

Education's definition and scope of sexual harassment, and the processes an educational institution must follow when on notice of prohibited Title IX sexual harassment. These new mandates have been incorporated into this EO Policy and accompanying EO Procedures.

It should be noted that the U.S. Department of Education's definition of sexual harassment and scope of application are narrower than this EO Policy's definition and scope of application. Though some of the definitions in this EO Policy vary from the U.S. Department of Education's definitions and in some respects provide more specific definitions, this EO Policy prohibits all forms of sex discrimination.

b. Disability Discrimination

The College prohibits disability-based discrimination against persons with disabilities and is committed to making reasonable accommodations for Community Members with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment. A substantial impairment is one that significantly limits or restricts a major life activity including but not limited to hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

Reasonable accommodations are made on a case-by-case basis. Job applicants or employees with a disability seeking a reasonable accommodation may contact the [Vice President for Human Resources](#). Students or participants in an educational program seeking a reasonable accommodation may contact the [Office of Disability Services](#).

c. Sexual and Romantic Relationships

There are inherent risks in any sexual and romantic relationship between individuals in unequal positions of authority (such as faculty/staff and student, or supervisor and supervisee). These relationships may be less consensual than perceived.

Therefore, the College prohibits faculty and staff from engaging in sexual and/or romantic relationships with Muhlenberg College students. The College also prohibits any person in a supervisory position from engaging in sexual and/or romantic relationships with individuals over whom they have direct supervisory or evaluative responsibilities. These relationships can be exploitative or create a conflict between the interests of the College and the personal interests of the person in the position of authority and power. This policy is also reflected in the Faculty Handbook Section 4.1.4 as it pertains to faculty.

Those who seek an exception to this policy must disclose the relationship to and consult with their supervisor and the Vice President for Human Resources, and follow any reasonable directions given by their supervisor and/or the Vice President for Human Resources concerning the matter.

Student employees who have direct responsibilities over students that are assigned to them are discouraged from engaging in sexual and/or romantic relationships with those students, must

immediately report the relationship to their supervisor, and follow any reasonable directions given by their supervisor concerning the matter.

Failure to self-report such relationships or follow reasonable directions after a self-report as required can result in disciplinary action up to and including termination of employment.

d. Free Speech and Academic Freedom

The College endorses the robust, stimulating and thought-provoking exchange of ideas, which requires in-depth and complex educational experiences as well as the space for divergent perspectives. We encourage our community to critically reflect on how asymmetric power dynamics may privilege and marginalize values, beliefs, and norms. Muhlenberg College endorses the principles of academic freedom and freedom of speech. These freedoms may directly challenge individual and group beliefs, values, and/or cultural norms. Grappling with new ideas is crucial to the development of complex thinkers and engaged citizens.

The EO Policy shall not be interpreted to abridge First Amendment rights, nor is it meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that may include germane but controversial or sensitive subject matters protected by academic freedom as defined in this EO Policy and in Sections 4.2 and 4.3.2.3 of the Faculty Handbook. 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, or otherwise violates the law, it is no longer recognized as falling inside the bounds of academic freedom or otherwise protected speech.

e. Amnesty for Student Drug and Alcohol Violations

Muhlenberg College encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, students are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be accused of policy violations such as underage drinking or other alcohol or drug violations at the time of the incident. It is in the best interest of the community that as many people as possible report to College officials and that witnesses come forward to share what they know. To encourage reporting and disclosure of relevant information, Muhlenberg College pursues a policy of offering Complainants⁶, Respondents, and witnesses, amnesty from being charged for alcohol and other drug violations as defined in the Student Code of Conduct. The College will provide educational rather than punitive responses in such cases.⁷

f. Bias-related Conduct

Bias-related conduct includes a broad range of conduct that can be verbal, non-verbal, written, or physical conduct that harms, discriminates, or harasses anyone in our community based on a Protected Class. Any conduct that is bias-related but does not otherwise rise to the level of discrimination or harassment under this EO Policy may be addressed through the Student Code of

⁶ See Section VI below for definitions of Complainant and Respondent.

⁷ See also the College's Medical Amnesty Policy at <https://www.muhlenberg.edu/media/contentassets/pdf/about/deanst/studentguide/Medical%20Amnesty%20Policy.pdf>.

Conduct, employee handbooks, other relevant College policies, or through remedial actions, education, and/or effective conflict resolution mechanisms.

g. Mandatory Reporting for Employees

The College has an obligation under certain laws and adopts as its own commitment to promptly address, remedy, and prevent the recurrence of discrimination prohibited by these laws. The College has determined, given the small and close-knit nature of the campus and the resulting close relationships that faculty, staff, and students may develop with each other, all employees are designated as mandatory reporters. Employees are to report Protected Class discrimination, harassment, sexual misconduct, intimate partner violence, stalking, and retaliatory harassment as defined under this EO Policy that they become aware of occurring on College property, at a College program or activity, or allegedly involving a College Community Member (faculty, staff, or student). Employees who are specifically trained and licensed to maintain confidentiality are not mandatory reporters when they are acting in a confidential capacity. Confidential employees at the College are: Counselors, Health Providers, and Clergy.

Mandatory reports shall be made to the Office of Equity & Title IX and Campus Safety. (See www.muhlenberg.edu/equityandtitleix/mandatoryreporting for more information.) Mandatory reports can be made by phone, email, in person, or through the College's online incident reporting option at: www.muhlenberg.edu/report.

Reports of criminal behavior, including sexual misconduct, intimate partner violence, and stalking must be made to Campus Safety at [484-664-3110](tel:484-664-3110). (See www.muhlenberg.edu/main/aboutus/campus-safety/csa for more information).

College employees are to make a good faith effort to fulfill their mandatory reporting obligations. Employees who are found to have deliberately withheld information may be subject to disciplinary action, up to and including termination.

h. Online Discrimination and Harassment

This EO Policy shall be interpreted broadly to include online and cyber manifestations of any of the conduct prohibited by this EO Policy. Examples of prohibited online conduct include, but are not limited to: cyberstalking, online harassment involving hateful speech and/or threats, online sexual harassment, posting of nonconsensual sexually intimate images or videos (also known as "revenge porn"), doxing to harass, intimidate, extort, or stalk another.

While the College may not control websites, social media, and other venues in which online harassment is made, when such communications are reported to the College, the College will assess jurisdiction and make all appropriate efforts to address the reported conduct and the negative effects of such conduct.

Members of the College community are encouraged to be good digital citizens and to refrain from online discrimination and harassment.

i. Retaliation Prohibited

Retaliation against an individual who takes any action or who otherwise participates in a process under this EO Policy is prohibited. It is central to the values of this College that any individual who believes they may have been the target of prohibited discrimination or harassment feels free to report their concerns for appropriate investigation and response, without fear of retaliation or retribution. (See Section V.i. below for further definition of “Retaliatory Harassment”).

V. DEFINITIONS OF PROHIBITED CONDUCT

a. Discrimination (based on Protected Classes)

Discrimination under this EO Policy is conduct *based on*⁸ the Protected Classes of age, ancestry, color, disability⁹, gender¹⁰, gender identity, marital status, national or ethnic origin, race, religion, sex, sexual orientation, veteran status, or any other basis protected by applicable federal, state or local laws, that:

- i. Excludes an individual from an educational or employment opportunity or program at the College;
- ii. Denies an individual the benefits of an educational or employment opportunity or program at the College; or
- iii. Adversely affects a term or condition of individual’s employment, education, living environment or participation at the College.

Discrimination may also exist where one party is given more favorable treatment or a benefit solely on the basis of their Protected Class to the detriment of others who are not members of that/those Protected Class(es), and it affects a term or condition of employment or an educational opportunity (e.g. admitting a student based solely on race or hiring someone based solely on gender).

Examples of prohibited discrimination:

- A Muslim student is not selected to join an athletic team because of the student’s religion.
- A female employee does not receive a promotion even though her evaluations and accomplishments exceeded her male counterpart who did receive the promotion.

b. Harassment (based on Protected Classes)

Harassment under this EO Policy is conduct *based on* the Protected Classes of age, ancestry, color, disability, gender, gender identity, marital status, national or ethnic origin, race, religion, sex,

⁸ Conduct must be based on a protected category in order to constitute discrimination. Conduct that otherwise leads to a negative effect that is not based on a protected category will fall outside of this definition of discrimination and may fall within other College policies.

⁹ Disability discrimination includes, but is not limited to, failing to provide a reasonable accommodation to a person with a disability, consistent with state and federal law.

¹⁰ In the legal context, gender is not an individual protected class and is interpreted as a form of sex discrimination. However, gender and sex are often used interchangeably in case law, so to ensure clarity, the College has enumerated gender as a protected class. In this EO Policy, all forms of gender discrimination or harassment are prohibited.

sexual orientation, veteran status, or any other basis protected by applicable federal, state or local laws, that is:

- i. Severe or pervasive;
- ii. Objectively offensive; *and*
- iii. Unreasonably interferes with, denies, or limits an individual's ability to participate in or benefit from the College's educational, employment, social or residential programs.

Examples of prohibited harassment:

- A student's repeated use of a slur that continues after being told to stop; the student's roommate begins to stay with friends to avoid the student using the slur.
- A professor refuses to call a student by the student's pronoun even after being asked multiple times by the student and other classmates; the professor subsequently avoids calling on the student during class and the student stops participating in class discussion and activities.

Harassment may also include:

- Graphic verbal, non-verbal, or written statements (including those communicated through cell phones, social media, or the Internet) that are threatening, harmful, or humiliating;
- Conduct that threatens or endangers the health or safety of any person;
- Intimidation or implied threats or acts that cause a reasonable fear of harm in another;
- Hazing, or any method of initiation or pre-initiation into any organization, whether or not the organization or body is officially recognized by the College, which causes or is likely to cause serious bodily injury, psychological harm, or social ostracism; and
- Bullying, or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally.

Harassment does not have to be based on intent to harm, be directed at a specific target, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below.

In determining whether conduct constitutes harassment, the conduct will be considered from the perspective of a reasonable person¹¹ in a similar situation. The following factors may also be considered:

- The degree to which the conduct affected one or more students' education or an individual's employment;
- The nature, scope, frequency, duration, and location of the incident or incidents;
- The identity, number, and relationships of the persons involved;
- Historical context of certain words, gestures, or other written or unwritten behavior; and
- Harm that resulted from the alleged harasser's conduct.

¹¹ A "reasonable person" is defined as a prudent, hypothetical person who exercises average care, skill, and judgment in a similar position and situation.

Harassment that is not based on a Protected Class will not fall under this EO Policy but may otherwise be prohibited conduct under the Student Code of Conduct, Faculty Handbook, and/or Administrative Staff/Service Personnel and Manager Handbooks. Offensive conduct based on a Protected Class but that does not rise to the level of harassment as defined in this EO Policy will be evaluated to determine whether it is otherwise prohibited conduct under the Student Code of Conduct, Faculty Handbook, and/or Administrative Staff/Service Personnel and Manager Handbooks.

c. Hate Crime

A hate crime is a severe form of harassment based on a Protected Class. A hate crime is a criminal offense under federal or state law that was motivated in whole or in part by the offender's ill will or hatred toward the targeted person(s)' or group(s)' Protected Class.¹²

Examples of hate crimes include:

- Physical assault of a disabled person because of the person's disability.
- Criminal trespass of property of a Latinx family because of their ethnicity.
- Shooting at an LGBTQ community center because of hatred towards gay and lesbian individuals.

d. Sexual Harassment

Sexual Harassment is an umbrella category that covers various types of prohibited conduct defined below. These definitions include "sexual harassment" as defined by the U.S. Department of Education in Title IX, the Clery Act, and Title VII. Sexual harassment can be verbal, non-verbal, written, online and/or physical conduct.

i. Hostile Environment Sexual Harassment

A **sexually harassing hostile environment** is created when objectively unwelcome conduct of a sexual nature is:

- Severe or pervasive;
- Objectively offensive; *and*
- Unreasonably interferes with, denies, or limits an individual's ability to participate in or benefit from the College's educational, employment, social or residential programs.

Examples of hostile environment sexual harassment:

- A student sends sexually explicit memes in a group chat for a class project and was asked

¹² Under Pennsylvania law, when a certain criminal offense is committed with the motive of hate, the crime of "ethnic intimidation" can also be charged.

to stop; the student continues sending the memes and several students drop out of the group chat.

- An employee frequently comments on the physical appearance and sex appeal of others in the office and the comments are completely unrelated to the workplace.

In determining whether conduct creates a hostile environment, the conduct will be considered from the perspective of a reasonable person in a similar situation. The following factors may also be considered:

- The degree to which the conduct affected one or more students' education or an individual's employment;
- The nature, scope, frequency, duration, and location of the incident or incidents;
- The identity, number, and relationships of the persons involved; and
- The harm that resulted from the alleged harasser's conduct.

Offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not on the basis of a Protected Class may be addressed through respectful communication, remedial actions, education and/or effective conflict resolution mechanisms. The conduct will also be evaluated to determine whether it is otherwise prohibited conduct under the Student Code of Conduct, Faculty Handbook, and/or Administrative Staff/Service Personnel and Manager Handbooks.

ii. Title IX Sexual Harassment

Title IX sexual harassment is conduct on the basis of sex, occurring only in the College's "education program or activity",¹³ that satisfies one or more of the following:

- 1) An employee who conditions the provision of an aid, benefit, or service at the College on an individual's participation in unwelcome sexual conduct (see also "Quid Pro Quo Sexual Harassment" below);
- 2) Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the College's educational program or activity; or
- 3) Sexual assault, dating violence, domestic violence, or stalking as further defined below.

iii. Quid Pro Quo Sexual Harassment

Quid pro quo sexual harassment is unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature by a person having actual or reasonably perceived power or authority over another. Such behaviors would constitute sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of

¹³ "Education program or activity" as defined by the U.S. Department of Education is "locations, events, or circumstances over which the [school] exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution." Title IX Sexual Harassment also only applies to discrimination occurring against a person in the United States.

rating or evaluating an individual's educational or employment development or performance; or the withholding of or receiving of any benefit (e.g., grades, promotions, etc.) is contingent on sexual or intimate activity.

Examples of quid pro quo sexual harassment:

- A student is promised a good grade if that student engages in sexual activity with the professor for that class.
- An employee is demoted with no advance notice or warning after rejecting multiple sexual advances of their supervisor.

e. Sexual Misconduct¹⁴

The College has defined categories of sexual misconduct, as stated below, for which action under this EO Policy may be imposed. Generally, the College considers Sexual Misconduct to be one of the most serious violations under this EO Policy, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees, when violations are found.¹⁵

Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved.

Sexual misconduct occurs when a sexual act is perpetrated without consent (see below for definition of "consent"). Sexual misconduct includes sexual assault, non-consensual sexual contact, and sexual exploitation, which is further defined below.

i. Sexual Assault¹⁶

Sexual assault includes any of the following sex offenses, defined generally as any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent (incapacitation).

- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Fondling:** The touching of the private body parts¹⁷ of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim

¹⁴ The definitions under Sexual Misconduct in this EO Policy are often considered a subset of "sexual harassment;" however, for purposes of this EO Policy and the consequences that may result from violating this EO Policy, the terms are distinct.

¹⁵ The College reserves the right to impose any level of sanction, ranging from a disciplinary warning up to and including suspension or expulsion/termination, for any acts under the EO Policy based on the facts and circumstances of the particular allegation.

¹⁶ Title IX requires that the College use the definition "sexual assault" as defined in the FBI's UCR program, as an offense that meets the definition of rape, fondling, incest, or statutory rape.

¹⁷ "Private body parts" includes the breasts, groin, genitals, mouth or other bodily orifice.

is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.¹⁸

ii. Non-Consensual Sexual Contact

Non-consensual sexual contact is defined as:

- Intentional,
- sexual touching,
- however slight,
- with any body part or object,
- by a person upon another person,
- without consent,

and does not otherwise constitute one of the definitions of sexual assault in this EO Policy.

iii. Sexual Exploitation

Sexual exploitation is defined as a situation in which a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise fall within the definition of Sexual Harassment, Sexual Assault, or Non-Consensual Sexual Contact.

Examples of sexual exploitation include:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person(s) being observed).
- Taking pictures or video or audio recording another in a sexual act or in any other private sexual activity without the consent of all involved in the activity.
- Exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity).
- Sharing, showing, or distributing (in any form) sexual or sexualized pictures or videos of an individual(s) without that individual's express permission.
- Engaging in or forcing or coercing another to engage in prostitution.
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person.
- Administering alcohol or drugs (such as "date rape" drugs) to another person without their knowledge or consent (even if the sexual or intimate act is not completed).

¹⁸ The age of consent in Pennsylvania, where Muhlenberg College is located, is 16 years old.

- Exposing one’s genitals in non-consensual circumstances or forcing or coercing another to expose their genitals.
- Possessing, distributing, viewing or forcing others to view illegal pornography.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

Consent is defined as words and/or actions indicating clear, knowing, and voluntary permission to engaged in sexual activity prior to and during sexual activity. Further definition of consent includes the following:

- Consent can be given by words or actions, but non-verbal consent is not as clear as verbal consent.
- Consent to one form of sexual or intimate activity cannot be automatically taken as consent to another form of sexual or intimate activity.
- Under this EO Policy, “No” always means “No,” and anything but a clear, knowing, and voluntary consent to any sexual activity is equivalent to a “no.”
- Silence, without actions demonstrating permission, cannot be assumed to show consent.
- If physical force is used to obtain consent or intimate access, there can be no consent.
- If a threat or intimidation under reasonable belief that the threat will be carried out is used to obtain consent, then there can be no consent.
- If consent is obtained by coercion, there is no consent. There is a difference between seduction and coercion. Coercion occurs when someone who does not want to engage in sexual activity is unreasonably pressured in nonphysical ways that can include verbal persistence by making someone feel guilty or obligated; lies; or, threats to end a relationship or spread rumors.

Incapacitation

Someone who is incapacitated cannot consent. Incapacitation is defined as the inability, temporarily or permanently, to give consent because the person is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. Being under the influence of drugs or alcohol does not necessarily indicate incapacity though incapacitation may result from the use of alcohol or other drugs that produces a state beyond drunkenness or intoxication. An individual who is incapacitated lacks the ability to make informed, rational judgments and cannot consent to sexual activity.

Evaluating incapacitation requires an assessment of whether a Respondent knew or should have been aware of the Complainant’s incapacitation based upon objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the Respondent’s position.

Objectively and reasonably apparent indications of impairment can include, but are not limited to:

- Slurred speech
- Bloodshot eyes
- Clumsiness
- Inability to focus
- Confusion
- Shaky balance

- Stumbling or falling down
- Vomiting
- Poor judgment
- Difficulty concentrating
- Combativeness or emotional volatility
- Outrageous or unusual behavior
- Unconsciousness

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not diminish one's responsibility to obtain consent.

f. Intimate Partner Violence (Dating or Domestic Violence)

Intimate partner violence includes any act of physical or sexual assault or threatened physical or sexual assault against a person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with that person. It may involve one act or an ongoing pattern of behavior. Intimate partner violence, includes, but is not limited to, threats, assault, violence or threat of violence to one's self, one's sexual or romantic partner, or to the family members or friends of relationship partner.

Other types of abusive behavior such as verbal, emotional, psychological, and economic abuse while not covered in this definition may otherwise be a policy violation under the Student Code of Conduct, Faculty Handbook, and/or Administrative Staff/Service Personnel and Manager Handbooks. Such incidents will be referred to the appropriate College official as necessary, and information regarding support resources will be provided as well.

i. Dating Violence

Dating violence is any act of physical or sexual assault or threatened physical or sexual assault committed by a person who is or has been in a sexual, dating, or romantic relationship of an intimate nature with the Complainant. For the purposes of this definition: (i) dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse; and (ii) dating violence does not include acts covered under the definition of domestic violence.

The existence of a dating relationship shall be determined based on a consideration of the following factors:

- i. The length of the relationship;
- ii. The type of relationship; and
- iii. The frequency of interaction between the persons involved in the relationship.

Examples of dating violence:

- A student forcefully shoves their partner upon seeing them flirting with someone else.
- A sexual partner threatens to harm himself if his partner does not engage in sex with him.

ii. Domestic Violence

Domestic violence is a felony or misdemeanor crime of violence committed (i) by a current or former spouse or intimate partner of the person affected; (ii) by a person with whom the person affected shares a child in common; (iii) by a person who is cohabitating with, or has cohabitated with, the person affected as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of the person affected under the domestic or family violence laws of Pennsylvania, or (v) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws Pennsylvania.

g. Stalking

Stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear of his or her safety or the safety of others, or suffer substantial emotional distress.

- **Course of conduct** means two or more acts that can include, but are not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- **Substantial emotional distress** means temporary or permanent significant mental suffering or anguish that may, but does not necessarily, require medical treatment or professional counseling.
- **Reasonable person** is a prudent, hypothetical person who exercises average care, skill, and judgment in a similar position and situation.

This EO Policy prohibits all stalking, not just stalking that occurs within the context of a relationship or stalking that is discriminatory.

Examples of stalking:

- A student constantly emails and texts a professor about topics unrelated to the content of the class at all times throughout the day; the professor asks the student to only communicate about course or school-related matters during class or office hours and the student continues texting the professor and begins to linger outside the building where the professor teaches.
- A student starts to monitor the whereabouts of their ex-partner after they break-up hoping that they can get back together. They try to catch their ex when they are not in class, they eat at the dining hall at the same time the ex eats, tracks the ex on social media, and follows the ex to the library and their dorm. When the ex notices the student lingering, they ask the student to leave them alone and blocks them on social media, but the student continues to monitor and follow the ex.

h. False Reports or Allegations

Deliberately false and/or malicious reports or allegations, or any deliberately false information provided to an Investigator or College official, made under this EO Policy, is prohibited. If a

Community Member is alleged to have provided deliberately false information to an Investigator and/or College official, such allegation will be investigated and addressed accordingly as set forth in the EO Procedures, and if found responsible, will be subject to appropriate disciplinary action up to and including termination from employment or expulsion from the College. Reports or allegations that are made in good faith but are found to be erroneous are not considered false or malicious reports or allegations.

i. Retaliatory Harassment

Retaliatory harassment is any negative or adverse action taken against a person participating in action under this EO Policy (“Protected Activity”) *because of* their participation in that Protected Activity. Intimidation, threats, coercion, or discrimination against an individual who has made a report or complaint, who has testified, assisted, participate, or refused to participate in a meeting, investigation, proceeding, or hearing under the EO Policy and Procedures, shall constitute prohibited retaliatory harassment.

Examples of retaliatory harassment:

- Student A files an allegation against Student B for sexual harassment; Student B learns about the allegation and begins spreading false rumors about Student A to other students and online.
- A faculty member complains of gender inequity in her department; the Department Chair then revokes his prior approval allowing her to attend a national conference, citing the faculty member’s tendency to “ruffle feathers.”

Retaliation against an individual for taking action under this EO Policy is a serious violation of this EO Policy and will be treated as an additional possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Director of Equity and Title IX Coordinator or designee. The College may take appropriate steps to protect individuals who fear that they may be subjected to retaliation during their participation in a Protected Activity.

VI. OTHER DEFINITIONS

a. Complainant

A Complainant is an individual or group of individuals identified in a Report and/or Complaint as having been subjected to alleged conduct in violation of the EO Policy regardless of whether that person(s) makes a report or seeks action under the EO Policy. This term does not imply pre-judgment concerning whether the individual(s) was subjected to prohibited conduct. A Complainant may be self-identified or identified through another person or a mandatory report. In addition, if the Office of Equity and Title IX is made aware of an allegation and a Complainant is unknown, does not want to initiate institutional proceedings under the EO Policy or is not willing to participate in the complaint resolution process, the Director of Equity and Title IX Coordinator and the VPSA may decide to initiate the procedures below with the College as the Complainant if information has been presented that reasonably indicates a potential violation of the EO Policy. A Complainant may also be referred to as a “party.”

For Title IX Sexual Harassment, a Complainant must be participating or attempting to participate in the education program or activity of the College.

b. Respondent

A Respondent is an individual, group of individuals, or an entity (student group, student organization, department, or office) who has been alleged to have engaged in Prohibited Conduct under the EO Policy. This term does not imply pre-judgment concerning whether the person, group, or entity committed the prohibited conduct. A Respondent may also be referred to as a “party.”

VII. INTERIM AND SUPPORTIVE MEASURES

Upon notice of an alleged violation under this EO Policy or upon request by a Complainant or Respondent, the College will evaluate whether initial or interim supportive, remedial, responsive and/or protective actions are necessary. Such actions are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College’s education program or activity, including measures designed to protect the safety of all parties or the College’s educational environment, and/or deter harassment, discrimination, and/or retaliation.

These measures can include but are not limited to:

- No contact orders;
- Referrals to counseling and/or medical services;
- Academic support or accommodations;
- Living or working arrangement adjustments;
- Transportation accommodations;
- Visa and immigration assistance;
- Student financial aid counseling;
- Providing campus escort;
- Referrals to the Employee Assistance Program for employees;
- Referral to campus and community support resources; and/or
- Other academic or work schedule and assignment accommodations deemed appropriate by the Director of Equity and Title IX Coordinator or an Official with Authority.

The College will maintain as private as possible measures implemented, provided confidentiality does not impair the College’s ability to provide the measures, and that it does not infringe upon the rights of a Complainant or Respondent.

The College may take additional prompt remedial and/or disciplinary action with respect to any Community Member or third party upon a finding that they have engaged in harassing or discriminatory behavior under this EO Policy. Procedures for handling reported incidents are fully described in the EO Procedures.

VIII. CONFIDENTIALTY, PRIVACY, AND REPORTING OPTIONS

Reports of alleged violations of this EO Policy are to be made to the Director of Equity and Title IX Coordinator/or an Official with Authority.

While the College strongly encourages the filing of a complaint as close in time as possible to when alleged conduct occurs, there is *no time limitation* on the filing of complaints. If the person(s) alleged to have engaged in the discriminatory or harassing behavior is no longer subject to the College's jurisdiction, the Director of Equity and Title IX Coordinator, in consultation with appropriate College officials and/or legal counsel when needed, will assess what action can be taken. All reports will be reviewed and addressed promptly.

The College will not publicly share the identity of any individual who has made a report or complaint under this EO Policy, or the identities of any individuals who have participated in any meeting, proceeding, or hearing under this EO Policy, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106.

Information shared internally shall be done so as privately as possible, and only shared with College officials who have a legitimate educational interest in being informed about incidents that fall within this EO Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. Some resources can offer confidentiality and advice without any obligation to inform others. Other campus resources are expressly there to help facilitate institutional action. If you are unsure of someone's duties and ability to maintain your confidentiality or privacy, ask them before you talk to them. They will be able to tell you, and help you make decisions about who can help you best.

The College has adopted a broad mandatory reporting policy for all employees who are required to promptly report protected class discrimination, harassment, sexual harassment, sexual misconduct, intimate partner violence, stalking, retaliatory harassment, and crimes that they become aware of to the Equity and Title IX Office and Campus Safety (see Section IV.h. above). Mandatory reporting still affords privacy to affected parties as it is only shared with College officials who have a need to know. There are certain resources on campus who are not mandatory reporters that offer confidential support when they are acting in a confidential capacity (see below).

If a Complainant does not wish to have their name shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the Complainant may make such a request to the Director of Equity and Title IX Coordinator and/or Campus Safety who will evaluate that request while considering the duty to ensure the safety of the campus and compliance with federal law. The College will make its best effort to honor the Complainant's wishes. However, in cases indicating pattern, predation, threat, weapons and/or violence, the College will likely not be able to honor a request for confidentiality or honor a request for no action. In cases where a Complainant requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim support and remedies to the Complainant, but will not

otherwise pursue formal action.

If a Complainant has been affected by discrimination or harassment under this EO Policy, but especially when violence or sexual violence is threatened or has occurred, the Complainant's personal safety is most important. A Complainant is encouraged to go to a safe place or seek out a trusted person as soon as possible. When a Complainant is ready and comfortable, they are encouraged to share what has occurred with someone they trust at the College. Sharing as much specific information along with any physical evidence may help in the event that a Complainant decides to take institutional, criminal, or legal action.

Any community member who becomes aware of or who experiences conduct that presents an immediate threat to life, property, or who is in need of medical attention should immediately call Campus Safety at 484-664-3110 or call "911."

a. Confidential Reporting

If a Complainant would like the details of an incident to be confidential, they should speak with campus Counseling Services, campus Health Services, College Chaplains, or off-campus rape crisis or dating violence resources who can maintain confidentiality. Campus counselors are available free of charge and can be contacted on an emergency basis. In addition, community members may speak on and off-campus with members of the clergy and chaplains, who will also keep disclosures made to them confidential. The following are confidential resources who can provide confidential support:

On campus:

- Counseling Services: 484-664-3178, 24/7 (eligible students)
- Student Health Services: 484-664-3199, 8am-5pm M-F (eligible students)
- College Chaplain: 484-664-3120, 8:30am-5pm M-F (students, faculty, staff)
- Jewish Life Director: 484-664-3270, 8:30am-5pm M-F (students, faculty, staff)
- Employee Assistance Program (EAP): 800-395-1616 (eligible faculty and staff)

Off campus:

- [Crime Victims Council of the Lehigh Valley \(CVCLV\)](#), 610-437-6611, 24-hour hotline
- [Turning Point/Domestic Violence Shelter](#), 877-438-4957, 24-hour helpline
- [Lehigh Valley Hospital](#), 17th Street, 610-969-2388
- [RAINN National Sexual Assault Hotline](#), free and confidential, 800-656-4673

b. Filing a Formal College Complaint (Private, not confidential)

A Complainant has the right and should expect to have incidents of discrimination or harassment under this EO Policy taken seriously by the institution when reported, and to have formal complaints investigated and properly resolved through internal procedures outlined in the EO Procedures. Once a report has been made, only people who need to know will be informed, and information will be shared only as necessary with investigators, witnesses, the Respondent, or any other individuals who have a right or need to know.

Reports, complaints, inquiries, or concerns about this EO Policy may be made in one of the following ways:

1. Online - <http://muhlenberg.edu/report>, 24/7
2. Phone call (Campus Safety) - 484-664-3110, 24/7
3. Phone call (Equity and Title IX Office) - 484-664-3562, 8:30am-5:00pm M-F
4. In person (Equity and Title IX Office) - 3rd floor of Haas Building, Dean of Students office, 8:30am-5:00pm M-F
5. Email – lin-chiwang@muhlenberg.edu, 8:30am-5:00pm M-F

Once on notice of an alleged violation of the EO Policy, the Director of Equity and Title IX will meet with the Complainant (and with the Complainant’s advisor if the Complainant chooses to have one) to discuss the report, gather additional information if necessary, and make an initial determination regarding whether the College has jurisdiction over the Respondent and the behavior alleged and if the latter is a potential violation of the EO Policy. If a formal complaint was filed and does not meet the minimum threshold under the EO Policy, the Complainant will be promptly notified and referred to appropriate resources on campus to help resolve the concern.

There is no time limitation on the filing of a formal complaint; however, if the Respondent is no longer subject to the College’s jurisdiction, the College’s ability to investigate, respond, and provide remedies may be limited.

c. Filing a Criminal Complaint

The College system and criminal system work independently from one another. Complainants can file reports with the College, with law enforcement, or both. However, investigations are conducted separately and independently.

A criminal investigation is conducted by Allentown Police Department (610-437-7751) or the law enforcement agency that has jurisdiction over where the alleged crime to determine whether there has been a violation of criminal laws. A person charged with a crime is subject to criminal penalties determined through the criminal court process.

Note about the difference between a College investigation and criminal investigation: A College investigation is conducted by an impartial College investigator to determine whether a violation of this EO Policy occurred. A person charged with a violation of this EO Policy is subject to sanctions determined through the appropriate College procedures. A violation of the EO Policy is not a crime. Additionally, criminal investigations or reports can be, but are not always, determinative of whether conduct under this EO Policy has occurred.

If a Complainant desires to bring criminal charges against the Respondent, Campus Safety and Counseling Services can provide support and the means whereby this can be accomplished through the Allentown Police Department or the local law enforcement agency where the misconduct occurred:

Campus Safety (484-664-3110)

Counseling Services (484-664-3178)
Allentown Police Department (610-437-7751)

d. Filing a Legal or External Complaint

An external or legal civil complaint is also an independent and separate process from the EO Policy College process. Those who wish to file a legal civil complaint are advised to speak to an attorney. External complaints may also be filed with the following government agencies:

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of
Education Bldg.
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: 800-421-3481
FAX: 202-453-6012; TDD: 800-877-8339
Email: OCR@ed.gov

PA Human Relations Commission
Executive Offices
333 Market St., 8th Floor
Harrisburg, PA 17101-2210
(717) 787-4410
(717) 787-7279 TTY users only

U.S. Equal Employment Opportunity
Commission: www.eeoc.gov/contact

e. Making an Anonymous Report

The online reporting option (<http://muhlenberg.edu/report>) allows persons who wish to file a report anonymously to do so. Anonymous reporting can limit the College's ability to respond to a situation if there is further information needed and the College is unable to contact the reporter or persons involved. The College's ability to respond to a reported incident depends on the amount of information the College is able to gather.

f. Federal Timely Warning Reporting Obligations

In compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, College administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. Federal law prohibits the College from releasing a victim's name. Consistent with the federal regulations, the College will provide information for community members to make safety decisions in light of the danger. All personally identifiable information is kept confidential, but statistical information must be passed along to Campus Safety Officials regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime to ensure greater community safety. The annual Campus Security Report is published online and may be accessed on Campus Safety's main website here: <https://www.muhlenberg.edu/main/aboutus/campus-safety>.

g. Child Abuse

Under the Pennsylvania Child Protective Services Law, College employees and other individuals who accept responsibility for the care, supervision, guidance or control of an individual under the age of 18, are required to immediately report suspected child abuse (including physical abuse, sexual abuse, sexual/commercial exploitation, neglect/negligent treatment, and emotional abuse) if the reporter has reasonable cause to suspect that a child is a victim of child abuse. Child abuse may be reported by calling ChildLine at 1-800-932-0313 or by making a report online: <http://www.dhs.pa.gov/citizens/reportabuse/index.htm>. These reports are to be made in addition to an employee's mandatory reporting obligation under this EO Policy.

IX. REVISION AND POLICY HISTORY

The EO Policy subsumes and rescinds the College's Hate/Bias Policy, the Sexual and Gender-Based Misconduct Policy, the Policy on Discriminatory Harassment, Sexual and Discriminatory Harassment Policy in Section 4.4 of the Faculty Handbook, and any other College policy related to definitions under this EO Policy.

This EO Policy and accompanying procedures will be reviewed and updated annually by the Director of Equity and Title IX Coordinator in coordination with the Provost, the Vice President for Student Affairs, the Vice President for Human Resources, and in consultation with legal counsel (collectively, the "Appropriate College Officials") when necessary. The Appropriate College Officials may make minor modifications to this EO Policy and accompanying procedures that do not materially alter the meaning or application of this EO Policy and procedures. The Appropriate College Officials may also amend this EO Policy and procedures materially with notice (on the College's website, with appropriate date of effect identified) upon determining that changes to law or regulations require policy or procedural alterations. If government regulations change in a way that impacts the EO Policy or accompanying procedures, the EO Policy or accompanying procedures will be construed to comply with government regulations in their most recent form. The appropriate faculty committee shall be consulted when material alterations are made as noted in Section 1 of the Faculty Handbook.

Procedures in effect at the time of the report of an incident will apply to resolution of incidents made under the EO Policy regardless of when the incident occurred. The EO Policy in effect at the time of the violation will apply even if this EO Policy is changed subsequently but prior to the report of an incident, unless the parties consent to be bound by the then current EO Policy.

This EO Policy is effective as of November 1, 2018.

Last revised August 14, 2020