

## PROBLEM RESOLUTION & COMPLAINT PROCEDURES FOR NON-FACULTY PERSONNEL (Amended November 2005)

A complaint is defined as the claim of an employee (the “complainant”) that s/he has been adversely affected by a breach or violation of the announced rules, regulations, and policies of Muhlenberg College as approved by the President and/or the Board of Trustees. The procedures set forth below provide both informal and formal mechanisms for resolving complaints. They are designed to ensure consistency and fairness in the College’s relations with its employees. No employee’s status within the College will be adversely affected because s/he utilizes these procedures.

These procedures may be invoked by any non-faculty employee who believes that s/he has been adversely affected by an action that violates Muhlenberg College’s rules, regulations, or policies, including Muhlenberg College’s policy against discrimination in employment based on age, color, disability, gender, gender identity, national or ethnic origin, race, religion, sexual orientation, veteran status, or any other basis protected by applicable federal, state or local laws. Because employment at Muhlenberg College is at-will, termination decisions may be challenged under these procedures only where they are believed to be in violation of Muhlenberg College’s rules, regulations, or policies, including Muhlenberg College’s policy against discrimination in employment based on age, color, disability, gender, gender identity, national or ethnic origin, race, religion, sexual orientation, veteran status, or any other basis protected by applicable federal, state or local laws. Further information regarding sexual harassment may be found in the “Policy Statement on Discriminatory Harassment” available from the Human Resources Office.

The policy of Muhlenberg College is to encourage employees to report promptly any perceived violation of rules, regulations, or policies, including discriminatory action. The College will endeavor to promptly investigate and resolve complaints in an equitable manner.

Under ordinary circumstances, it is expected that a complaint, formal or informal, will be asserted within one month of the perceived violation or discriminatory action. Any complaint not presented within this time period shall be deemed to have been waived. While it is preferable, it is not necessary that informal complaint procedures be utilized prior to the initiation of formal complaint procedures by a complainant.

The investigation of employee’s complaints will be handled in a confidential manner by Muhlenberg College. Muhlenberg College, in turn, expects that during and following the investigation of any employee complaint, all individuals involved in the investigation will respect the confidentiality of the process and the privacy of others. Any individual who intentionally breaches the confidentiality of this process and/or violates the privacy interest of others will be subject to disciplinary action.

### I. INFORMAL COMPLAINT PROCEDURES

Relationships between people in the workplace involve occasional problems. In most instances all parties will benefit if problems can be resolved promptly, in an atmosphere that encourages cooperative efforts toward an amicable resolution, and without resort to formal complaint procedures. For this reason, employees are urged to identify problems and to seek resolution in an informal manner whenever possible.

Unless the problem arises from the action of the complainant’s supervisor **and** the complainant reasonably believes discussions with his/her supervisor would be futile, initial consultation between the complainant and his/her supervisor is appropriate and expected. If the supervisor is involved in the alleged violation **and** the complainant reasonably believes discussions with his/her supervisor would be futile, the complainant should consult that person’s supervisor or the Vice President of Human Resources.

A variety of approaches may be pursued by the complainant and/or the supervisor, at the option of the complainant, in an effort to resolve the matter. These approaches include but are not limited to the following:

- a. The complainant may seek, within a one-month period, to resolve the matter directly with the individual(s) whose actions prompted the complaint (the “respondent”). If the complainant does so, the respondent shall within 7 days, respond to the complainant’s

concerns in an effort to clarify, interpret, and/or offer a resolution to the matter. Depending upon the circumstances, a written response from the respondent may be appropriate.

- b. The complainant may seek the intervention of his/her supervisor or, where circumstances warrant, the next highest college supervisor, in resolving the complaint. If s/he does, the supervisor shall, within 7 days, explore the matter and respond to the complainant in an effort to clarify, interpret and/or offer a resolution to the matter. Depending upon the circumstances, a written response from the supervisor may be appropriate.
- c. The complainant, with the approval of the respondent, may seek the advice and counsel of a third party, whom both parties trust, to explore possible resolutions to the matter.

Should the complaint be resolved during the informal process, the complainant or other interested party may ask that Vice President of Human Resources maintain a confidential record of the complaint and its resolution.

## **II. FORMAL COMPLAINT PROCEDURES**

Muhlenberg College has established formal complaint procedures that may be invoked if a complaint remains unresolved following the use of informal complaint procedures, or if the complainant elects to forego the benefits of the informal complaint process. The formal procedure begins when the complainant presents his/her complaint, in writing, to the Vice President of Human Resources. The matter will be considered a formal complaint upon receipt of the complaint in writing by the Vice President of Human Resources.

### *A. The Content of the Complaint*

Although no particular format is required, the complainant shall provide the following information in writing to the Vice President:

1. Descriptive statement of facts and circumstances that provide the basis for the complaint, including the identity of any person(s) involved or with knowledge of facts or circumstances underlying the complaint.
2. Date(s) of the incidents and time period of the complaint.
3. Descriptions of attempts, if any were made, to resolve the complaint on an informal basis and the results of those attempts.
4. Signature of the employee and the date of the complaint.

### *B. The Review Board*

Within 14 days of receipt of the written complaint, the Vice President of Human Resources will select a Review Board. The Review Board shall consist of four impartial members chosen from the college administration. The method of selection shall be as follows:

One member shall be recommended by the complainant and one member by the respondent – both to be approved by the Vice President of Human Resources. The remaining two persons will be selected by the Vice President of Human Resources.

During the selection process, both the complainant and the respondent may disapprove the selection of one of the persons chosen and request that another person be recommended by the individual who completed the initial selection. No member of the Review Board will be selected for the purpose of serving as an advocate, nor will any member serve as an advocate during the review process. Review Board members will be selected to exercise independent judgment on the issues presented in the case. The Board will name one of its members as chair.

Should the case involve sexual harassment, the Vice President of Human Resources shall guarantee an equal membership of males and females on the Review Board.

All meetings of the Review Board will be private and their deliberations will be confidential; only those persons authorized by the Board may attend, although it is generally to be expected that individuals requested to appear on behalf of an affected party will be heard. Decisions and recommendations of the Review Board will normally be made by consensus rather than by majority vote.

### *C. The Role of the Review Board*

Ten days prior to the date set for the Review Board meeting, written notice of the time, place, and purpose of the Review Board meeting should be given to the complainant and the respondent.

At the same time, the respondent should also be given notice of the formal complaint filed against him/her, his/her right to have a person of his/her choosing present at the hearing as an observer, and his/her rights at the hearing. There shall be no right for any party to have counsel at the hearing.

The Review Board will conduct the hearing and examine witnesses and documents in the order and manner deemed appropriate by the chair. However, the complainant and the respondent also have the right to call and examine the witnesses, introduce written evidence, cross examine any witness regarding any relevant matter, and make opening statements and summations either orally or in writing.

The complainant may be required by the Review Board to be present at the hearing. The complainant's failure to appear upon request of the Review Board may waive all rights under the complaint procedures.

A record shall be kept of the hearing and shall include all exhibits offered and at least a summary of the testimony taken. The manner of creating the record shall be within the discretion of the chair of the Review Board. A tape recording shall be an acceptable means of keeping a record.

The Review Board may obtain expert advice as it deems necessary.

The Review Board's hearing will not be conducted strictly according to rules of evidence or procedures applicable in courts of law; the chair of the Review Board shall make determination as to the actual procedures to be used at the hearing and the relevance of certain matters. Any relevant matter upon which responsible persons customarily rely in the conduct of serious matters may be considered. The burden of proof shall be on the complainant.

Within 21 days of reviewing the facts of the case, the Review Board shall provide to the Vice President of Human Resources its written findings and recommendations on the issues raised. It will list its recommended actions and state the rationale for its recommendations.

### *D. The Role of the Vice President of Human Resources*

Within 21 days of receipt of the Review Board's recommendations, the Vice President of Human Resources will consider the Review Board's recommendations and will make a written determination of the issues and the actions to be taken. S/he will provide copies of his/her written determination to the complainant, respondent, and the Review Board.

### *E. Final Resolution and Appeals*

A complaint will be considered resolved if neither the complainant nor the respondent requests further consideration and review within a period of 7 days following receipt of the Vice President's determination.

Appeals may be requested in writing through the Vice President of Human Resources to the President of the College. Such written appeals shall be transmitted immediately to the President for review and determination.

### *F. The Authority and the Role of the President*

The President, or his/her designee, shall review the recommendations of the Review Board and the determination of the Vice President and, within 14 days, provide to the complainant and the respondent his/her written determination of the matter. Written determinations of the President of the College, or his/her designee, shall be regarded as final.

### *G. No Penalty for the Complaint*

There will be no discrimination, and/or penalty, against any employee for his/her part in the presentation of a complaint.

#### H. *Records*

Appropriate arrangements shall be made in the Human Resources Office for the retention of records of actions that are the result of formal complaint procedures involving non-faculty employees. Tape recordings of Review Board proceedings may be made, but a written transcript will not be made unless the complainant or respondent secures the services of a court reporter and pays the cost thereof. All documentation/evidence that is gathered pursuant to the filing of a formal complaint will be kept in a confidential file and released to appropriate persons only on an "as needed" basis.

#### I. *Additional Time*

Although the need for expediency is demonstrated through stated timetables, it is understood that additional time may become necessary at any stage of the formal process. Requests for additional time should be presented to the Vice President of Human Resources. Any such requests shall be communicated by the Vice President of Human Resources to the complainant or respondent.

#### J. *Amendments*

These procedures may be amended by the President in consultation with the Executive Committee of the Board of Trustees.