



**FACULTY EQUAL OPPORTUNITY  
REPORT AND  
RESOLUTION PROCEDURES**

*for Reports made about faculty  
under the Equal Opportunity and  
Nondiscrimination Policy*

## **I. INTRODUCTION AND PURPOSE**

Muhlenberg College (“College”) is committed to taking prompt and effective action to end any prohibited discrimination and harassment (“Prohibited Conduct”) as defined in the Equal Opportunity and Nondiscrimination Policy (“EO Policy”); removing any identified hostile environment caused by Prohibited Conduct; and preventing recurrence of Prohibited Conduct. The purpose of the Faculty Equal Opportunity Report and Resolution Procedures (“Procedures”) is to provide prompt, fair, and equitable resolution of allegations of Prohibited Conduct.

Any person who believes that they have been subjected to prohibited discrimination or harassment by a faculty member may make a Report of an alleged violation of the EO Policy to the College to initiate the procedures outlined below. In addition, if the Office of Equity and Title IX is made aware of an allegation and a Reporting Party (defined below) is unknown, does not want to initiate institutional proceedings under the EO Policy, or is not willing to participate in the Report resolution process, the Director of Institutional Equity, Compliance and Title IX and the Provost<sup>1</sup> may decide to initiate the procedures below with the College as a Reporting Party if information has been presented that reasonably indicates a potential violation of the EO Policy.

## **II. STANDARD OF REVIEW**

The College utilizes a preponderance of the evidence standard during the investigation process, as well as in all related proceedings, including disciplinary hearings. A “preponderance of the evidence” standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it; that is, it is more likely than not that the alleged conduct occurred. A Responding Party (See Section III.H. for the definition of “Responding Party”) is presumed not to have violated the EO Policy unless a preponderance of the evidence establishes a policy violation.

## **III. DEFINITIONS**

### **A. Advisor**

Each Reporting Party and Responding Party have the right to have one advisor of their choice present with them at any meeting related to a report or investigation made under this EO Policy. An advisor of choice may be a friend, mentor, family member, attorney, or any other person a party chooses to have as long as the advisor is available and willing to participate with the party in all meetings and proceedings as requested by the party.

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<sup>1</sup> At all times throughout this document, when the Director of Institutional Equity, Compliance and Title IX and Provost are addressed, the President may designate another College official (“Designee”) in place of their roles if the respective College official deems that a Designee is appropriate, e.g. if the College official has conflict; if the College official is not present; or if the College official is the subject of the investigation. Generally, a Designee will be another College official with a similar title and/or position, and/or of similar knowledge, skill and professional judgment.

A party may also choose to not have an advisor or to change advisors during the process. It is the party's responsibility to ensure that their advisor of choice is willing, able, and available for meetings. Advisors may confer quietly with their advisees as necessary during any meetings or proceedings as long as they do not disrupt any part of the process. An advisor who interferes, is verbally abusive, is disruptive to the process, causes unreasonable delay, or persists in trying to substantively participate in the process after a warning to cease and desist may be asked to leave and may be precluded from attendance at future meetings.

### **B. Reporting Party**

A Reporting Party is an individual or group of individuals identified in a Report as having been allegedly subjected to conduct that could constitute a violation of the EO Policy regardless of whether that person(s) makes a report or seeks action under the EO Policy. Conduct does not need to happen during programming or activities, on campus, or even within the USA.

A Reporting Party can be a person other than a student or employee of Muhlenberg College who is alleged to have been subjected to conduct that could constitute alleged conduct of harassment, discrimination or other prohibited conduct under the EO Policy under Title IX at a time when that individual was participating or attempting to participate in a College education program or activity.

This term does not imply pre-judgment concerning whether the individual(s) was subjected to prohibited conduct. A Reporting Party may be self-identified or identified through another person or a mandatory report. In addition, if the Office of Institutional Equity, Compliance and Title IX is made aware of an allegation and a Reporting Party is unknown, does not want to initiate institutional proceedings under the EO Policy, or is not willing to participate in the Report resolution process, the Director of Institutional Equity, Compliance and Title IX and Provost may decide to initiate the procedures below with the College as the Reporting Party if the information has been presented that reasonably indicates a potential violation of the EO Policy. A Reporting Party may also be referred to as a "party."

### **C. Report**

A Report is an oral or written request to the College regarding an alleged incident of harassment, discrimination, or other prohibited conduct under the EO Policy by a Reporting Party that objectively can be understood as a request for the College to investigate and make a determination about alleged discrimination under the EO Policy.

### **D. Decision-maker**

A Decision-maker is a person with the authority to make a determination on the Responding Party's responsibility and/or determine the appropriate sanction following a finding of responsibility for a violation of the EO Policy. The Provost, panel members, and appeal officer are examples of Decision-makers.

### **E. Investigator**

An Investigator is a trained staff member(s), or a trained outside investigator(s), who conducts an impartial, fair, and unbiased investigation into allegations of violations of the EO Policy under the

guidance of the Director of Institutional Equity, Compliance and Title IX. The Director of Institutional Equity, Compliance and Title IX may serve as the Investigator and may also designate more than one Investigator to conduct an investigation as needed.

**F. Relevant and Impermissible Evidence or Information**

Relevant evidence or information are facts that have a logical connection to the conduct alleged – whether to prove or disprove, and may also include contextual facts that provide Investigators and Decision-makers with a fuller understanding of what occurred. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex-based discrimination occurred, and evidence is relevant when it may aid a Decision-maker in determining whether the alleged sex-based discrimination occurred. Generally, information about a person’s character and statements of personal opinion are not considered relevant, unless to help the Investigator(s) and Decision-makers assess credibility. Lie detector/polygraph evidence is not relevant and shall not be permissible or considered.

In addition, the following types of evidence, and questions seeking that evidence, shall be excluded as impermissible (i.e., must not be accessed or considered, except by the College to determine whether an exception in paragraphs (i) through (iii) applies; must not be disclosed; and must not otherwise be used), regardless of whether they are relevant:

- (i) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- (ii) A party’s or witness’s records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the recipient obtains that party’s or witness’s voluntary, written consent for use in the recipient’s grievance procedures; and
- (iii) Evidence that relates to the Reporting Party’s sexual interests or prior sexual conduct, unless evidence about the Reporting Party’s prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Reporting Party’s prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Reporting Party and Respondent does not by itself demonstrate or imply the Reporting Party’s consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

The Investigator(s) and Decision-makers have sole discretion in determining if evidence and information are relevant and/or permissible.

## **G. Report**

A Report is an oral or written account of an alleged incident of harassment, discrimination, or other prohibited conduct under the EO Policy. The Report shall be kept confidential by all parties and shall be maintained by the Director of Institutional Equity, Compliance and Title IX and the Provost.

## **H. Responding Party**

A Responding Party is an individual, group of individuals or an entity (e.g. department or office) that 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 Responding Party may also be referred to as a “party.”

## **I. Witness**

A witness is a person believed to have relevant information regarding an investigation, including but not limited to someone who was present when the alleged incident occurred, someone the Reporting Party or Responding Party communicated with about the alleged incident, or someone who otherwise possesses relevant information regarding the investigation. Witnesses may be identified by the parties and/or by the Investigator. The number of witnesses presented by a party is not determinative of the final outcome.

## **IV. SUPPORTIVE AND INTERIM REMEDIAL MEASURES**

Upon notice of an alleged violation under this EO Policy or upon request by a Reporting Party or Responding Party, 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.

Such measures could include but are not limited to:

- No contact orders;
- Referrals to counseling and/or medical services;
- Work-related adjustments;
- Transportation support;
- Visa and immigration assistance;
- Providing campus escort;
- Work schedule, location and assignment measures;
- Administrative leave; and/or
- Any other measures as determined by the Director of Institutional Equity, Compliance and Title IX or Provost.

To every extent possible, the College will limit disclosure of any supportive or interim remedial measures, provided that it does not impair the College's ability to provide the supportive or interim remedial measures and that it does not infringe upon the rights of a Reporting Party or Responding Party.

Consideration for these measures include, but are not limited to, the impact on all parties and the ability to stop the alleged behavior, prevent any recurrence, and maintain a safe campus environment that is as free from disruption as possible.

Supportive and interim remedial measures may be adjusted or removed at the discretion of the Director of Institutional Equity, Compliance and Title IX and/or the Provost, as appropriate, based on the information collected during the investigation or as requested by the parties<sup>2</sup>.

In all cases in which a supportive or interim remedial measure is imposed on a Responding Party, the Responding Party will be given the opportunity to meet with the Director of Institutional Equity, Compliance and Title IX and the Provost prior to the interim measure being imposed, or as soon as reasonably possible after the measure is imposed, to show cause why the interim measure should not be implemented or should be revised. The Director of Institutional Equity, Compliance and Title IX and the Provost have sole discretion to implement or stay an interim measure and to determine its conditions and duration based on the conditions detailed above.

Violation of a supportive or interim measure may be grounds for disciplinary action, including and up to immediate termination.

#### **A. Emergency Removal**

In the case of a Responding Party who has been accused of a potential violation under the EO Policy, the Responding Party may be intermily placed on leave entirely or partially from the College's education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is conducted by the Director of Institutional Equity, Compliance and Title IX and the Provost in conjunction with the CARE team using its violence risk assessment procedures.

As with any other supportive or interim measure imposed on the Responding Party, the Responding Party will be given the opportunity to meet with the Director of Equity & Title IX Coordinator and Provost prior to the emergency removal being imposed, or as soon as reasonably possible following removal, to show cause why the emergency removal should not be implemented or should be revised.

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<sup>2</sup> For example, parties subject to a no-contact order may decide that it is more restrictive than protective and mutually request that the no-contact order be lifted; or information disclosed in an investigation may lead to a determination that the initial allegation is not substantiated and the interim measure is no longer protective or remedial.

The Director of Institutional Equity, Compliance and Title IX and Provost have sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violations of an emergency removal under this policy will be grounds for discipline, which may include up to termination from the College.

## **V. PROCEDURES FOR INVESTIGATION AND ADJUDICATION OF ALLEGATIONS OF VIOLATIONS OF THE EQUAL OPPORTUNITY AND NONDISCRIMINATION POLICY**

The procedures described below will apply to any allegations that have been made against a faculty member under the EO Policy.

At all times during the intake process, investigation and adjudication under the EO Policy:

1. All of the parties shall be treated equitably;
2. Any person designated as a Title IX Coordinator, Investigator, or Decision-maker shall not have a conflict of interest or bias for or against Reporting Parties or Respondents generally or any individual Reporting Party or Respondent; and
3. There shall be a presumption that the Respondent is not responsible for the alleged violation until a determination is made at the conclusion of the College's grievance procedures for reports of violations of the EO Policy.

### **A. Intake Process:**

Once on notice of an alleged violation of the EO Policy, the Director of Institutional Equity, Compliance and Title IX (or Designee) will notify the Provost of the same. The Provost will determine whether the department chair is similarly notified. The Director of Institutional Equity, Compliance and Title IX will meet with the Reporting Party (and with the Reporting Party's advisor if the Reporting Party chooses to have one) to discuss the allegation. The Director of Institutional Equity, Compliance and Title IX will gather additional information from the Reporting Party and gather any other necessary information to make an initial determination regarding whether the Responding Party and the behavior alleged are potential violations of the EO Policy. At any point during the intake process (or any other process defined below), the Reporting Party may request and/or the Director of Institutional Equity, Compliance and Title IX and Provost shall consider whether any supportive or interim remedial measures are appropriate.

- i. If the conduct alleged is not a potential violation of the EO Policy, the Reporting Party may be referred to another office who may have jurisdiction; the Director of Institutional Equity, Compliance and Title IX may discuss the matter with the Provost to determine if respectful communication, remedial actions, education, and/or effective conflict resolution mechanisms that do not lead to disciplinary action would be appropriate; or the report will be documented and the matter closed for information only.

- ii. If no Reporting Party is identified but the conduct alleged is a potential violation of the EO Policy and a known Responding Party has been identified, the Director of Institutional Equity, Compliance and Title IX will discuss the matter with the Provost to determine whether the College will move forward as the Reporting Party.
- iii. If no Reporting Party is identified, the conduct alleged is not a potential violation of the EO Policy, and/or a known Responding Party has not been identified, the Director of Institutional Equity, Compliance and Title IX will discuss the matter with the Provost to determine whether community -based education, training, or other prevention or remedial actions would be appropriate; or the report will be documented and the matter closed for information only.
- iv. Reports of discrimination or harassment against more than one Respondent, or by more than one Reporting Party against one or more Respondents, or by one party against another party, may be consolidated when the allegations of discrimination or harassment arise out of the same facts or circumstances.
- v. If a Reporting Party chooses to move forward with a Report, the Reporting Party will be presented with formal or informal resolution options. Typically, the Reporting Party may choose to move forward with either of these options. However, informal resolution options may not always be appropriate and the Director of Institutional Equity, Compliance and Title IX and the Provost in discussion with the Reporting Party, shall determine whether it is appropriate on a case-by-case basis. If the Reporting Party chooses to pursue a formal resolution, then formal proceedings shall commence. (See Section V.F. below).
- vi. If a Reporting Party is identified and chooses not to move forward with any of the resolution options outlined in these procedures, the conduct alleged is a potential violation of the EO Policy, and a known Responding Party has been identified, the Director of Institutional Equity, Compliance and Title IX will discuss the matter with the Provost to determine whether the College will move forward as the Reporting Party.

## **B. Informal Resolution Options**

Recognizing that every situation is different, and every individual's needs are different, the College seeks to provide as many types of fair resolutions as possible to adapt to the needs of our community members. Therefore, in lieu of the formal investigation and resolution processes defined below, at any time prior to the adjudication of an alleged violation of the EO Policy, the



parties may voluntarily agree to resolve the Report by one of the following informal resolution methods:

1. The parties voluntarily agree to engage in a restorative process to resolve the matter;
2. The parties agree to resolve the matter through a negotiated resolution facilitated by the Director of Institutional Equity, Compliance and Title IX and/or Designee; or
3. The parties agree that the Responding Party accepts responsibility for violating the EO Policy and the parties agree to engage in an interactive process with the Director of Institutional Equity, Compliance and Title IX and the Provost to determine an appropriate sanction(s) and resolution.

To initiate one of the informal resolution processes, the Reporting Party must indicate this in writing to the Director of Institutional Equity, Compliance and Title IX. The Responding Party shall then receive notice of the Reporting Party's request to engage in an informal resolution. The Responding Party may accept or reject the option to engage in an informal resolution. Alternatively, either party may request to engage in an informal resolution process any time after the formal resolution proceedings have been initiated. The request must be made in writing to the Director of Institutional Equity, Compliance and Title IX. Once received, the Director of Institutional Equity, Compliance and Title will notify the other party who can agree to or reject the offer to engage in an informal resolution.

Once the parties agree to engage in an informal resolution, the formal resolution proceedings shall be placed on hold. If the informal resolution process results in an outcome agreed upon by both parties, the formal resolution proceedings shall be closed. If the informal resolution process breaks down and does not reach a result agreeable to both parties, the formal resolution proceeding will initiate or resume.

Informal resolution options are not available in situations where there is alleged sex-based harassment against an employee.

Notwithstanding the requests of the parties, the Director of Institutional Equity, Compliance and Title IX has the discretion to determine whether it is appropriate to offer an informal resolution option and may consider the following factors to assess whether an informal resolution process is appropriate, or which form of informal resolution may be most successful for the parties:

- The parties' amenability to Informal Resolution;
- Likelihood of potential resolution, considering any power dynamics between the parties;
- The nature and severity of the alleged misconduct;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;

- Disciplinary history of the Responding Party;
- Whether an emergency removal is needed;
- Report complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties; and/or,
- Adequate resources to invest in the informal resolution process (time, staff, etc.).

It is ultimately up to the Director of Institutional Equity, Compliance and Title IX and the Provost to determine if an informal resolution process is available or successful. Informal resolution outcomes are not appealable.

### **C. Restorative Process**

The Restorative Process is a philosophy of accountability focused on the reparation of harm, recognition or solving of any underlying problems that may have led to harm, and reconciliation of interpersonal conflict. The Restorative Process is an intentional practice that identifies who has been harmed, what actions are necessary to repair the harm, restore relationships and prevent recurrence of harm. A Restorative Process may involve a restorative circle, a restorative conference, restorative statements or another restorative process designed by the facilitator assigned to best address harm and reconciliation. Facilitators are trained and selected by the Director of Institutional Equity, Compliance and Title IX to facilitate the process.

If the parties agree to engage in a Restorative Process, the first step will be for the parties to separately meet with the facilitator to determine the most appropriate Restorative Process for the situation. The facilitator will guide and communicate with the parties throughout the entire Restorative Process. The Restorative Process will be documented, as well as any resolution reached during the Restorative Process, and kept in a confidential file in the Provost's Office and the Office of Institutional Equity, Compliance and Title IX.

Failure by the parties to abide by the resolution reached during the Restorative Process may result in appropriate responsive or disciplinary action. If no resolution is reached through the Restorative Process, the facilitator will refer the matter back to the Director of Institutional Equity, Compliance and Title IX and Provost to determine appropriate next steps.

To promote candor, honesty, and genuine participation, and recognizing that the Restorative Process requires a certain level of vulnerability from participants, information disclosed during the Restorative Process will remain confidential and be deemed impermissible. Accordingly, the facilitator will not share information disclosed during the Restorative Process, for example, to the Investigators and Decision-makers, should the Restorative Process break down and revert to the formal process.

### **D. Negotiated Resolution**

The Parties may agree to engage in a negotiated resolution facilitated by the Director of Institutional Equity, Compliance and Title IX, or other appropriate College official, where parties

can negotiate an agreement to resolve the Report. The first step in this process will be for the facilitator to meet with each party separately and assess the needs of the party and their desired outcome. Some possible outcomes of a negotiated resolution can include one or some of the following:

- Counseling Sessions;
- No Contact Order;
- Bi-weekly or monthly check-in meetings with the Director of Institutional Equity, Compliance and Title IX, Provost, Associate Provost, or other appropriate College official;
- Restriction from participation in particular events;
- Individualized training;
- Change in assignments or position; and/or,
- Performance improvement plan.

Negotiated resolution will generally not be an appropriate resolution mechanism used to address allegations of conduct that could justify suspension or termination from the College, which includes egregious intentional and targeted discriminatory or harassing conduct, or any conduct that may also be criminal (e.g. hate crime, sexual assault, intimate partner violence, or stalking).

The negotiated resolution shall be documented and kept in a confidential file in the Provost's Office and the Office of Institutional Equity, Compliance and Title IX. Failure by the parties to abide by the negotiated resolution may result in responsive or disciplinary action.

Similar to the Restorative Process, to promote candor, honesty, and genuine participation, information disclosed during the negotiated resolution will remain confidential and be deemed impermissible. Accordingly, the facilitator will not share information disclosed during the negotiated resolution process, for example, to the Investigator and Decision-makers, should the resolution process break down and revert to the formal process.

#### **E. Responding Party Accepts Responsibility**

At any time prior to the completion of Formal Resolution options (see below), the Responding Party may choose to accept responsibility for one, some, or all of the allegations. The Responding Party shall notify the Director of Institutional Equity, Compliance and Title IX of their choice to accept responsibility, pause the formal resolution, and resolve the matter through an interactive process with the Reporting Party, the Director of Institutional Equity, Compliance and Title IX and the Provost to determine an appropriate sanction and resolution. The Director of Institutional Equity, Compliance and Title IX will notify the Reporting Party. The Reporting Party may choose to pause the formal resolution and resolve the matter through an interactive process with the Responding Party, the Director of Institutional Equity, Compliance and Title IX and Provost, or choose to continue with the formal resolution process.

If the Responding Party accepts responsibility for one or some of the allegations, the parties may choose whether to resolve all allegations through the interactive process, resolve only the

allegation(s) for which the Responding Party accepted responsibility through the interactive process and proceed with the formal resolution process on the remaining allegations, or move forward with the formal resolution process noting in the investigation report for Decision-makers that the Responding Party had accepted responsibility for one or some of the allegations.

The resolution reached through the informal process shall be documented and kept in a confidential file in the Provost's Office and the Office of Institutional Equity, Compliance and Title IX. Failure by the parties to abide by the resolution may result in appropriate responsive or disciplinary action.

Should the interactive process break down and revert back to the formal process, the Responding Party's acceptance of responsibility for some or all of the allegations shall be shared with the Investigator and Decision-makers, as the Responding Party's acceptance of responsibility is relevant and pertinent to the Decision-makers.

#### **F. Formal Investigation and Resolution**

If an informal resolution option is not chosen by the parties, the Report shall proceed under the formal resolution process detailed in this Section V.F. The formal resolution begins with a written notification to all parties that the College has received a Report and that an investigation has been initiated. The Director of Institutional Equity, Compliance and Title IX shall appoint a trained impartial Investigator or Investigators to conduct an investigation.

- Investigations will be thorough, reliable and impartial, and will entail interviews with relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary. Interviews will be conducted separately and individually with parties and witnesses.
- Investigations are completed as expeditiously as possible. Investigations may take longer, however, in exigent or extenuating circumstances.
- The College's investigation and resolution process will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that criminal charges have been dismissed or reduced.
- The Investigator shall provide both parties with the opportunity to provide a statement, evidence, and names of potential witnesses.
- Parties are permitted to ask questions of the other party and witnesses through the impartial Investigator during the investigation process.
- While the parties may disagree with the Investigator as to the form of the question or the relevance, the Investigator is the sole determiner of relevance and form of questions asked.

- The Investigator shall review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
- Parties and witnesses are expected to cooperate with and participate in the College’s investigation. Interviews may, in certain circumstances, be conducted virtually by video or telephonically, and written statements may be provided if a live interview is not possible.
- If a Responding Party elects to not participate in the investigation, the Responding Party will not have the opportunity to offer new evidence during the appeal stage of the process. (See Section VII. Appeals below)

### **G. Dismissal of Report**

At any point during the intake, investigation or formal resolution process, the Director of Institutional Equity, Compliance and Title IX, in consultation with the Provost, may dismiss a Report for any of the following reasons: (i) the Respondent cannot be identified after taking reasonable steps to do so; (ii) the Respondent is not participating in the College’s education program or activity and is not employed by the College; (iii) the Reporting Party voluntarily withdraws any or all of the allegations in the Report, the Director of Institutional Equity, Compliance and Title IX declines to initiate a Report, and the Director of Institutional Equity, Compliance and Title IX determines that, without the Reporting Party’s withdrawn allegations, the conduct that remains alleged in the Report, if any, would not constitute a violation of the EO Policy even if proven; or (iv) the Director of Institutional Equity, Compliance and Title IX determines the conduct alleged in the Report, even if proven, would not constitute a violation of the EO Policy. Prior to dismissing the Report under this paragraph, the Director of institutional Equity, Compliance and Title IX must make reasonable efforts to clarify the allegations with the Reporting Party.

Dismissal will not preclude continuation of appropriate supportive or interim remedial measures or referral to another department to review if appropriate. If a dismissal occurs at this stage, the parties shall have the ability to appeal. (See Section VII. Appeals below)

### **H. Investigation Timeframe**

Typically, an investigation will be completed within sixty (60) calendar days from the date upon which the Office of Institutional Equity, Compliance and Title IX decides to pursue an investigation. In some circumstances, it may be necessary to extend that timeframe for good cause<sup>3</sup>. If good cause exists to extend the investigation timeframe beyond sixty (60) calendar days,

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<sup>3</sup> “Good cause” may be due to the complexity of the investigation, availability and scheduling of witnesses, the occurrence of a simultaneous criminal investigation and request from law

as determined by the Investigator in consultation with the Director of Institutional Equity, Compliance and Title IX, both parties will be promptly notified.

### **I. Advisor Participation in a Formal Investigation**

For longer or more involved discussions, the parties and their advisor should ask for breaks or step out of meetings to allow for private conversation. A party with their advisor may request to meet or speak with the Investigator in advance of any interview for a pre-meeting. This pre-meeting will allow an advisor to clarify any questions they may have and allows the College an opportunity to clarify the role the advisor is expected to take.

There may be instances in which a party will wish to disclose documentation related to the allegations with their advisor. In such cases, an advisor is expected to maintain the confidentiality of the records disclosed to them. These records may not be disclosed to third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the College's confidentiality expectations.

### **J. Formal Investigation Conclusion**

1. **Draft Investigation Report.** At the conclusion of the investigation, the Investigator will draft a preliminary investigation report (“draft report”) and provide both parties with the opportunity to review the draft report and submit feedback or corrections. The draft report is the collection of all relevant and not otherwise impermissible evidence that will be presented to any Decision-maker.
  - a. The parties will have seven (7) business days<sup>4</sup> to provide feedback, corrections, or questions to the Investigator. At times, feedback may necessitate further investigation or inquiry. If further relevant information is gathered by the Investigator, the Investigator will issue a supplement to the draft report to the parties for review and response and will determine a reasonable amount of time for feedback to the supplemental information, which will generally not exceed five (5) business days.
  - b. While the parties may disagree with the Investigator as to the form or contents of the draft report, the relevance or impermissibility of evidence included or omitted, or which amendments or comments will be added or not, the Investigator, in consultation with the Director for Institutional Equity, Compliance and Title IX, has discretion of the content of the report though the Investigator should note a party's disagreement in the final report. Parties may appeal on this basis if they wish. (See Section VII. Appeals below.)
2. **Final Report.** The Investigator then prepares the final investigation report that incorporates the draft report, feedback to the draft report, and an analysis and

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enforcement that the College delay its investigation, College breaks, or other factors which unavoidably delay the investigation.

<sup>4</sup> A “business day” is a day that the College is open to conduct business.

recommendation as to whether the evidence meets a preponderance of the evidence standard that the alleged Prohibited Conduct occurred. The final report is reviewed by the Director of Institutional Equity, Compliance and Title IX when necessary, prior to issuance to the parties and the Provost. The Investigator shall issue the final report within two (2) weeks upon receipt of the last feedback to the draft report unless good cause exists for an extension. If the Investigator is unable to issue the final report within the two-week time frame, the Investigator will provide written notification and explanation to the parties.

Within five (5) business days of receipt of the final report, the parties must elect in writing to the Director of Institutional Equity, Compliance and Title IX whether they intend to move forward with the Provost adjudication (Section V.K.) or formal panel adjudication (Section V.L.). If one party elects or both parties elect to go to a formal panel, the formal panel will be convened by the Director of Institutional Equity, Compliance and Title IX to adjudicate the matter.

### **3. Confidentiality of Reports**

The parties and their advisors shall hold the draft report, the final report and all accompanying documentation in confidence and shall not reproduce or distribute any such documents, in whole or in part. Reproduction or distribution of these confidential documents may lead to disciplinary action.

### **K. Provost Adjudication and Resolution after Conclusion of Investigation**

The Provost shall review the final report and if the Provost determines that further information is needed from the Investigator, the Provost may remand the report to the Investigator for further questioning or investigation. Within seven (7) calendar days after receipt of the final report (or the updated report if it is remanded to the Investigator), the Provost shall determine, based on the final report and after an objective evaluation of all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence, and provided that credibility determinations must not be based on a person's status as a Reporting Party, Respondent, or witness, whether by a preponderance of the evidence the Responding Party's conduct occurred as alleged and whether such conduct is a violation of the EO Policy. If the Provost has determined that the Responding Party has not violated the EO Policy, the Provost shall meet separately with the parties and inform them of the outcome. The Provost shall follow such meeting with a written determination and appeal rights.

If the Provost determines by a preponderance of the evidence that the Responding Party's conduct occurred as alleged and such conduct is a violation of the EO Policy, the Provost shall also determine the appropriate sanction (s). Prior to the determination of an appropriate sanction(s) : (i) the Provost shall review the Responding Party's disciplinary record at the College; (ii) the Reporting Party will be given an opportunity to submit a written impact statement, i.e. how the Reporting Party has been impacted and what the Reporting Party believes would be appropriate sanctions and resolution; and (iii) the Responding Party will be given an opportunity to submit a written mitigating factors statement and what the Responding Party believes would be appropriate

sanctions and resolution. The Provost shall schedule a meeting with the parties, individually, after determining that the Responding Party violated the EO Policy for parties to make such statements. However, at the Provost's discretion, these statements may also be submitted in writing within a reasonable timeframe set by the Provost.

Upon receipt of the parties' statements, if submitted, the Provost shall make their decision in writing within five (5) business days of receipt of the statements or deadline for submission and issue their written decision and sanction determination to the parties. The Provost may extend this deadline as reasonably necessary, if so, and shall provide written notification to the parties.

#### **1. In Cases of Suspension or Termination of a Tenured Faculty Member**

When the Provost determines that the appropriate sanction for a Responding Party tenured faculty member is suspension or termination, the Provost shall consult with the President before issuing the final sanction determination.

Notification to the parties will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in person, notice will be presumptively delivered.

#### **L. Formal Panel ("Panel") Adjudication and Resolution after Conclusion of Investigation**

Formal panel adjudication shall be conducted by a pool of faculty and staff. There shall be at least one faculty member and at least one staff member on the Panel.

Faculty members of the pool shall be appointed by the Provost after the 1st of the year, and as identified by the Faculty Nominating Committee in consultation with the Faculty Personnel and Policies Committee. The staff members shall be appointed by the Vice President of Human Resources. Panel members shall serve for a period of three years, subject to renewal and early withdrawal.

The Panel shall consist of three (3) Panel members and a Panel Chair will be chosen by the Panel in consultation with the Director of Institutional Equity, Compliance and Title IX.

When convening a Panel, the Director of Institutional Equity, Compliance and Title IX shall choose Panel members considering, but not limited to, potential conflicts of interest, potential bias or perception of bias, availability, and understanding of particular issue(s) presented in a particular case<sup>5</sup>.

A majority decision (two out of three) is necessary in order to make a determination.

The Panel shall review the final report and if the Panel determines that further information is needed from the Investigator, the Panel may remand the report to the Investigator for further questioning or investigation. Within seven (7) calendar days after receipt of the final report (or the updated report if it is remanded to the Investigator), the Panel shall determine, based on the final

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<sup>5</sup> For example, in a case that involves issues related to academic freedom.



report and after an objective evaluation of all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence, and provided that credibility determinations must not be based on a person's status as a Reporting Party, respondent, or witness, whether by a preponderance of the evidence the Responding Party's conduct occurred as alleged and whether such conduct is a violation of the EO Policy. If the Panel determines by a preponderance of the evidence that the Responding Party's conduct as alleged did not occur or did not constitute a violation of the EO Policy, the Panel shall advise the parties in writing.

If the Panel determines by a preponderance of the evidence that the Responding Party's conduct as alleged did occur and did constitute a violation of the EO Policy, the Panel shall also determine recommended sanctions<sup>6</sup>. Prior to the determination of recommended sanctions, the Reporting Party will be given an opportunity to submit a written impact statement, i.e. how the Reporting Party has been impacted and what the Reporting Party believes would be appropriate sanctions and resolution, and the Responding Party will be given an opportunity to submit a written mitigating factors statement and what the Responding Party believes would be appropriate sanctions and resolution. These statements shall be submitted to the Panel within five (5) business days unless otherwise set by the Panel.

Upon receipt of the parties' statements, if submitted, the Panel shall make their decision in writing within five (5) business days of receipt of all statements or deadline for submission and issue their written decision and recommended sanction determination to the Provost. The Panel may extend this deadline as reasonably necessary and shall provide written notification to the parties and the Provost.

The Provost shall review the Panel's finding and recommended sanction (s) determination. The Provost makes the final sanction determination. The Provost shall make the final sanction determination in writing within five (5) business days of receipt of Panel's recommendation or deadline for submission and issue the written decision and sanction determination to the parties. The Provost shall provide to the parties, in writing, of the Panel's finding and recommended sanction determination, the Provost's final sanction determination, and include an explanation if the Provost determines that a different sanction is more appropriate. The Provost may extend this deadline as reasonably necessary and, if so, shall provide written notification to the parties.

### **1. In Cases of Suspension or Termination of a Tenured Faculty Member**

When the Provost determines that the appropriate sanction for a Responding Party tenured faculty member is suspension or termination, the Provost shall consult with the President before issuing the final sanction determination.

Notification to the parties will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated

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<sup>6</sup> The Panel will not have access to a faculty member's personnel record or employment history and makes a recommended sanction determination based only on the information available to the Panel.

in official College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

## **2. Resignation**

Should a Responding Party faculty member resign after a Report has been filed and/or while a formal investigation is proceeding under the EO Policy, the College will continue to move forward with the appropriate process as defined in these Procedures. If the outcome of the investigation is that a policy violation occurred, the personnel records of the Responding Party will include the outcome of the investigation. If the outcome of the investigation is that no policy violation occurred, the Responding Party's personnel record shall reflect the Responding Party's resignation. If contacted for a reference check, Human Resources will respond in a manner consistent with the law and College policies.

## **VI. SANCTIONS**

The list of typical sanctions for an employee who has engaged in harassment, discrimination and/or retaliation includes (this list is not exhaustive):

- Warning – Verbal or Written;
- Performance Improvement/Management Plan;
- Required Counseling;
- Required Training or Education;
- Loss of Annual Pay Increase;
- Loss of Oversight or Supervisory Responsibility;
- Demotion;
- Suspension with pay;
- Suspension without pay; and/or,
- Termination for just cause.

***Other Actions:*** In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation including:
  - Whether conduct was directed at a particular individual or group;
  - Whether conduct involved a physical act;
  - Whether conduct involved intentional conduct; and/or,
  - Whether the Responding Party was in a supervisory or leadership position.
- An individual's disciplinary history;
- Previous reports or allegations involving similar conduct that show a pattern or persistence of behavior;
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation;

- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation;
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the reporting party and the community;
- Aggravating or mitigating factors including those articulated by the parties; and/or,
- Any other information deemed relevant.

## VII. APPEALS

The parties have a right to appeal the intake, conduct and sanction determinations. Sanctions issued are implemented immediately unless the Director of Institutional Equity, Compliance and Title IX and the Provost stays their implementation in extraordinary circumstances, pending an outcome of an appeal.

All requests for appeal under the EO Policy must be submitted in writing pursuant to the following procedure:

1. Appeals must be submitted in writing to the Director of Institutional Equity, Compliance and Title IX within seven (7) business days after the delivery of a dismissal of a Report or the written determination from the Adjudication and Resolution. A party may request additional time to file an appeal for good cause but must request the time extension within the allotted time to file an appeal. If granted by the Director of Institutional Equity, Compliance and Title IX, both parties shall be granted the time extension. The original finding and sanction/responsive actions will stand as the final determination if the appeal is not timely.

2. Either party may file an appeal, but all appeals are limited to the following grounds:

- Error of Judgment:** There was a clear error of judgment where the decision was made with no reasonable basis or adequate consideration of all of the relevant circumstances.
- Bias affecting Judgment:** The Director of Institutional Equity, Compliance and Title IX, the investigator(s), the Decision-maker(s), or the Provost exhibited bias for or against one or both parties, or had a conflict of interest or bias for or against Reporting Parties or Respondents generally or the individual Reporting Party or Respondent that would change the outcome of the matter.
- Procedural Error:** A procedural error or omission occurred that could have impacted the decision to dismiss the Report or the findings or sanctions (e.g. substantiated bias, material deviation from established procedures, etc.)
- New Evidence:** New evidence is information that could have impacted the decision to dismiss the Report or the findings or sanctions and that was unknown or unavailable at the time the dismissal, findings or sanctions were determined. A

summary of this new evidence, how it was previously unknown or unavailable, and its potential impact must be included in the appeal.

- e. **Sanction Inappropriate:** The sanction is clearly inappropriate or is not commensurate with the conduct violation.

3. The Director of Institutional Equity, Compliance and Title IX, shall appoint a trained, neutral appeal officer to review and decide the appeal. In cases involving termination, a third-party appeal officer shall be appointed.

4. When a party files an appeal, the other party and, if appropriate, the Investigator(s), the Provost, or the Panel Chair if there was a Panel decision, will be notified and given an opportunity to respond to any and all ground(s) on which the appeal is based. Any response to an appeal must be submitted to the appeal officer within seven (7) business days of notice. Any responsive person may request additional time to file a response for good cause but must request a time extension within the allotted time to file a response. If granted by the appeal officer, all responsive persons shall be granted the time extension.

5. The party filing the appeal has the burden of proof. Such party must show that the grounds for an appeal have been met, and the other party may respond that the grounds have not been met or that additional grounds are met.

6. The appeal officer may consult with the Director of Institutional Equity, Compliance and Title IX and/or other College administrators as needed.

7. The appeal officer shall consider the following principles, but is not limited to such principles, when deciding an appeal:

- a. The decision by the appeal officer is to be deferential to the original decision. The original dismissal, finding and sanction are presumed to have been decided reasonably and appropriately.
- b. Appeals are not intended to be a full re-investigation of the original allegation. In most cases, appeals are confined to a review of the final report, written adjudication and resolution document, and other pertinent documentation regarding the grounds for appeal.
- c. An appeal granted based on new evidence should normally be remanded to the Provost or the Panel. An appeal granted based on other grounds may either be remanded to the Provost or the Panel, to reopen the investigation, clarify findings, or remedy errors.
- d. If the appeal officer grants the appeal based on inappropriate sanctions, the appeal officer may remand to the Provost with an explanation or the Panel, as appropriate, designee, or Panel, respectively, for reconsideration.

- e. An appeal granted based on other grounds may be remanded to the Investigator to issue an appropriate sanction. Such sanction determination shall be final.

8. At any time before the appeal officer issues its decision, the party that filed the appeal may withdraw the appeal. In addition, at any time before the appeal officer issues its decision, either party may request that the appeal process be stayed for good cause for a specific period of time. If such a request is made, with the concurrence of the Director of Institutional Equity, Compliance and Title IX and the other party, the appeal process will be stayed for the requested period of time.

9. The appeal officer will issue a decision within seven (7) calendar days of receipt of all information and responses. In instances where the appeal officer needs additional time, the appeal officer shall notify the parties and the Director of Institutional Equity, Compliance and Title IX Coordinator within the allotted time for issuing a decision.

10. In Cases of Suspension or Termination of a Tenured Faculty Member - the appeal officer shall consult with the President before issuing the final determination.

11. The appeal officer shall issue its decision in writing to the parties, the Director of Institutional Equity, Compliance and Title IX and Provost. Notification to the parties will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in person, notice will be presumptively delivered.

12. The appeal officer's decision is final and not subject to further appeal.

## **VIII. DISABILITY ACCOMMODATIONS**

Muhlenberg College is committed to providing employees or others with disabilities with reasonable accommodations and support needed to ensure equal access to all processes at the College. Anyone requesting such accommodations or support should contact the Director of Disability Services or the Vice President of Human Resources, who will review the request and, in consultation with the person requesting the accommodation, as well as the person coordinating the Resolution Process, will determine which accommodations are appropriate and necessary for full participation.

## **IX. REVISION**

These procedures shall be used in connection with all prohibited discrimination, harassment or other conduct under the EO Policy and supersede any other procedures governing faculty conduct that could arise under the EO Policy.

These procedures will be reviewed and updated annually by the Director of Institutional Equity, Compliance and Title IX in coordination with the Provost, the Vice President for College Life, the Vice President for Human Resources, and in consultation with legal counsel when necessary. The

Director of Institutional Equity, Compliance and Title IX, et al, may make minor modifications to the EO Policy and accompanying procedures that do not materially alter the meaning or application of the policy and procedures. The Director of Institutional Equity, Compliance and Title IX, et al, may also vary the EO Policy and procedures materially with notice (on the College's website, with the appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in the EO Policy and accompanying procedures.

Procedures in effect at the time of the resolution will apply to the resolution of incidents, regardless of when the alleged incident occurred. The College Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless each of the parties consents to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

These procedures are effective as of January 14, 2019.

These procedures were last revised effective August 1, 2024.