



**FACULTY EQUAL OPPORTUNITY
COMPLAINT AND
RESOLUTION PROCEDURES**

*For complaints made about faculty
under the Equal Opportunity and
Nondiscrimination Policy*

I. INTRODUCTION AND PURPOSE

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

Any person who believes they have been subjected to Prohibited Conduct by a faculty member may make a complaint under the EO policy to the Office of Equity and Title IX to initiate the procedures outlined below. If the Office of Equity and Title IX is made aware of an allegation and a Complainant (See Section III.b. for definition of “Complainant”) is unknown or does not want to initiate institutional proceedings described in these Procedures, the Director of Equity & Title IX Coordinator and the Provost may decide to initiate the procedures below with the College as a Complainant 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 Respondent (See Section III.h. for definition of “Respondent”) is presumed *not* to have violated the EO Policy unless a preponderance of the evidence establishes a policy violation. 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.

III. DEFINITIONS

a. Advisor

Complainants and Respondents have the right to have one advisor of their choice present with them at any meeting related to a report or investigation made under the 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.

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.

If a party chooses not to have an advisor, an advisor will be appointed to the party should a matter go to a Title IX live hearing (see Section V.D. below) for purposes of conducting cross-examination on behalf of the party.

b. 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 this policy regardless of whether that person(s) makes a report or seeks action under this EO policy. This term does not imply pre-judgment concerning whether the Complainant(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 Provost¹ determines that initiating these Procedures is appropriate. 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.

c. Complaint

A Complaint is a written account of an alleged incident of harassment, discrimination, or other prohibited conduct under the EO Policy by a Complainant wishing to initiate action under the EO Policy which may be resolved formally or informally according to the procedures outlined below. A Complaint must be signed by the Complainant, or if a Complainant is not identified, signed by the Director of Equity & Title IX on behalf of the College.

d. Decision-maker

A Decision-maker is a person with the authority to make a determination on Respondent’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 a Decision-maker.

e. Investigator

An Investigator is a trained staff member, or a trained outside investigator, who conducts an impartial, fair, and unbiased investigation into allegations of violations of the EO Policy under the guidance of the Director of Equity & Title IX Coordinator. The Director of Equity & Title IX

¹ At all times throughout this document, when the Director of Equity & Title IX Coordinator, and the 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 is not present; if the College official has a conflict; 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.

Coordinator may serve as the Investigator and may also designate more than one Investigator to conduct an investigation as needed.

f. Relevant 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. Generally, information about a person’s character, statements of personal opinion, and past sexual history are not considered relevant, unless relevant to assist the Investigator(s) and Decision-makers assess credibility or consent. Lie detector/polygraph evidence is not relevant and shall not be admissible or considered. The Investigator(s) and decision-makers have sole discretion in determining the relevance of evidence/information.

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. A Report without a Complaint does not initiate an investigation. The Report is kept confidential and maintained by the Director of Equity & Title IX Coordinator and the Provost.

h. Respondent

A Respondent is an individual, group of individuals, or an entity (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 Prohibited Conduct. A Respondent may also be referred to as a “party.”

i. Witness

A witness is a person believed to have relevant information related to alleged Prohibited Conduct, including but not limited to someone who was present when the incident occurred; someone the Complainant or Respondent communicated with about the incident; or, someone who possesses relevant information in some other form. Witnesses may be identified by parties and by the Investigator. The number of witnesses presented by a party is not determinative of the final outcome.

IV. 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.

Such measures could include but are not limited to:

- No contact orders;
- Referrals to counseling and/or medical services;
- Work-related adjustments;
- Transportation accommodations;
- Visa and immigration assistance;
- Providing campus escort;
- Work schedule and assignment accommodations;
- Administrative leave; and/or
- Any other accommodations deemed appropriate by the Director of Equity & Title IX Coordinator or the Provost.

To every extent possible, the College will limit disclosure of any accommodations or protective measures, provided that it does not impair the College's ability to provide the accommodations or protective measures and that it does not infringe upon the rights of a Complainant or Respondent.

Consideration for these measures include, but are not limited to, the ability to stop the alleged behavior, prevent any recurrence, and maintain a safe campus environment that is as free from disruption as possible. The impact on all parties is taken into account and the least restrictive and intrusive means are typically implemented.

Supportive and interim measures are also able to be adjusted or removed at the discretion of the Director of Equity & Title IX Coordinator and/or the Provost, as appropriate, based on the information gathered during the investigation or as requested by the parties.²

In all cases in which an interim measure is imposed on a Respondent, the Respondent will be given the opportunity to meet with the Director of Equity & Title IX Coordinator 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 measure should not be implemented or should be revised. The Director of Equity & Title IX Coordinator 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 Respondent who has been accused of a potential Title IX sexual harassment violation under the EO Policy, the Respondent may be intermily placed on leave entirely or

² 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 leads to a determination that the initial allegation is not substantiated and the interim measure is no longer protective or remedial.

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 Title IX Coordinator and Provost in conjunction with the CARE team using its violence risk assessment procedures.

As with any other supportive or interim measure imposed on the Respondent, the Respondent will be given the opportunity to meet with the Director of Equity & Title IX Coordinator and the 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.

The Director of Equity & Title IX Coordinator 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 Equal Opportunity and Nondiscrimination Policy (EO Policy).

A. Intake Process

Once on notice of alleged Prohibited Conduct, the Director of Equity & Title IX Coordinator (or designee) will notify the Provost of the same. The Provost will determine whether the department chair is similarly notified. The Director of Equity & Title IX Coordinator will meet with the Complainant (and with the Complainant's advisor if the Complainant chooses to have one) to discuss the allegation. The Director of Equity & Title IX Coordinator will gather additional information from the Complainant and gather any other necessary information to make an initial determination regarding whether the Respondent and the conduct alleged are covered under the EO Policy. At any point during the intake process (or any other process defined below) the Complainant may request and/or the Director of Equity & Title IX Coordinator shall also determine whether any supportive or interim measures are appropriate.

- i. If the conduct alleged is not covered under the EO Policy, the Complainant may be referred to another office who would have jurisdiction; the Director of Equity & Title IX Coordinator 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 for information only, and the matter closed.

- ii. If no Complainant is identified, the conduct alleged is covered under the EO Policy, and a known Respondent has been identified, the Director of Equity & Title IX Coordinator will discuss the matter with the Provost to determine whether the College will move forward as the Complainant.
- iii. If no Complainant is identified, the conduct alleged is *not* covered under the EO Policy, and/or a known Respondent has not been identified, the Director of Equity & Title IX Coordinator 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 for information only, and the matter closed.
- iv. If a Complainant is identified and chooses to move forward with a Complaint, the Complainant will be presented with formal and informal resolution options. Typically, the Complainant may choose to move forward with either of these options. However, in certain cases, an informal resolution option may not always be appropriate, e.g. cases involving potential criminal conduct in addition to a possible policy violation, a pattern of conduct, or predation. If the Complainant chooses to pursue informal resolution, the Director of Equity & Title IX Coordinator and the Provost in discussion with the Complainant shall determine whether it is appropriate on a case-by-case basis. If the Complainant chooses to pursue a formal resolution, then formal proceedings shall commence. (See Section V.C. and D. below).
- v. If a Complainant 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 Respondent has been identified, the Director of Equity and Title IX Coordinator will discuss the matter with the Provost to determine whether the College will move forward as the Complainant.

B. Adaptable (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, the parties may agree to resolve the Complaint by one of the following methods of resolution:

1. The parties agree to engage in a restorative justice process to resolve the matter,

2. The parties agree to resolve the matter through a negotiated resolution facilitated by the Director of Equity & Title IX and/or designee, or
3. The parties agree that the Respondent accepts responsibility for violating the EO Policy and the parties agree to engage in an interactive process with the Director of Equity & Title IX and the Provost to determine an appropriate sanction and resolution.

To initiate one of the adaptable resolution processes, the Complainant must first file a formal complaint with the Office of Equity & Title IX. At the time of filing the formal complaint, the Complainant may simultaneously request to participate in one of the adaptable resolutions, and the Respondent shall be notified of both the notice of Complaint and the Complainant's request to engage in an adaptable resolution. The Respondent may accept or reject the option to engage in an adaptable resolution. Alternatively, either party may request to engage in an adaptable resolution process any time after the formal resolution proceedings have been initiated. The request must be made in writing to the Director of Equity & Title IX. Once received, the Director of Equity & Title IX will notify the other party who can agree to or reject the offer to engage in an adaptable resolution. If a party rejects an adaptable resolution option, the formal resolution process defined below shall be followed.

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

Adaptable resolution is *not* available in situations where a student has alleged sexual harassment against an employee.

Adaptable resolution outcomes are not appealable.

i. Restorative Justice (RJ) Process

Restorative Justice is a philosophy of accountability focused on the reparation of harm, recognition of solving of any underlying problems that may have led to harm, and reconciliation of interpersonal conflict. RJ is an intentional practice that identifies who has been harmed, determines what actions are necessary to repair the harm, restores relationships, and seeks to prevent recurrence of harm. An RJ process may involve a restorative circle, a restorative conference, restorative statements, or another restorative process designed by the facilitator to best address harm and reconciliation.

If parties agree to engage in an RJ process, the first step will be for the parties to separately meet with the RJ facilitator to determine the most appropriate RJ process for the situation. The RJ facilitator will guide and communicate with the parties throughout the entire RJ process. The RJ

process will be documented, as well as any resolution reached during the RJ process, and kept in a confidential file in the Provost's Office and the Office of Equity & Title IX.

Failure by the parties to abide by the RJ resolution may result in appropriate responsive or disciplinary action. If no resolution is reached through the RJ process, the RJ facilitator will refer the matter back to the Director of Equity & Title IX to determine appropriate next steps.

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

ii. Negotiated Resolution

The Parties may agree to engage in a negotiated resolution facilitated by the Director of Equity & Title IX, or designee, where parties can negotiate an agreement to resolve the Complaint. 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 Equity & Title IX, Provost, Associate Provost, or other appropriate College official
- Restriction from participation in particular events
- Individualized training
- Change in assignments or position
- 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 Equity & Title IX. Failure by the parties to abide by the negotiated resolution may result in appropriate responsive or disciplinary action.

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

iii. Respondent Accepts Responsibility

At any time prior to the completion of a Formal Resolution option (see Sections C. and D. below), the Respondent may choose to accept responsibility for one, some or all of the allegations.

The Respondent shall notify the Director of Equity & Title IX of their choice to accept responsibility, pause the formal resolution, and resolve the matter through an interactive process with the Complainant, the Director of Equity & Title IX and the Provost to determine an appropriate sanction and resolution. The Director of Equity & Title IX will notify the Complainant of the Respondent's acceptance of responsibility. The Complainant may choose to pause the formal resolution and resolve the matter through an interactive process with the Respondent, the Director of Equity & Title IX and the Provost, or choose to continue with the formal resolution process.

If the Respondent 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 Respondent 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 Respondent had accepted responsibility for one or some of the allegations.

The resolution reached through the interactive process shall be documented and kept in a confidential file in the Provost's Office and the Office of Equity & 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 Respondent's acceptance of responsibility for some or all of the allegations shall be shared with the Investigator and Decision-makers, as the Respondent's acceptance of responsibility is relevant and pertinent to the Decision-makers per the formal resolution process.

C. Formal Investigation and Resolution for non-Title IX allegations

If an adaptable resolution is not chosen by the parties, the Complaint shall proceed under the formal resolution process detailed in Section V.C. or D. The formal resolution begins with an investigation. The Director of Equity & Title IX Coordinator shall appoint a trained impartial Investigator or Investigators ("Investigator") to conduct the investigation.

i. Formal Investigation

Investigators shall adhere to the following guidelines for investigations:

- Investigations will be thorough, reliable and impartial, and will entail interviews with all 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.
- Parties are permitted to ask questions of the other party and witnesses (“cross-examination”) through the Investigator during the investigation process. The Investigator has sole discretion to determine relevance of any questions asked.
- 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 phone, and written statements may be provided if a live interview is not possible. .
- If a Respondent elects to not participate in the investigation, the Respondent will not have the opportunity to offer new evidence during the appeal stage of the process. (See Appeals Section VII below.)

Dismissal of Complaint

At any point during the formal resolution process, if it is determined by the Investigator, the Director of Equity & Title IX, or the Decision-makers, that there is no reasonable cause to believe that the EO Policy has been violated, the Director of Equity & Title IX Coordinator and Provost shall have authority to terminate the investigation and end formal resolution proceedings. This decision may be appealed by either party pursuant to Section VII below.

If at any point during the formal resolution proceedings, the Complainant notifies the Director of Equity & Title IX that they wish to withdraw their Complaint and stop the formal resolution process, the Director of Equity & Title IX Coordinator and Provost may choose to terminate the investigation and end formal resolution proceedings on a case-by-case basis. This decision is not appealable.

Dismissal will not preclude continuation of appropriate supportive or interim measures, or referral to another department to review if appropriate.

Investigation Timeframe

Typically, an investigation will be completed within sixty (60) calendar days from the filing of a formal complaint with the Office of Equity and Title IX, or the date upon which the Office of Equity and Title IX decides to pursue an investigation, whichever is first. In some circumstances, it may be necessary to extend that timeframe for good cause³. If good cause exists to extend the

³ “Good cause” may be due to the complexity of the investigation, availability and scheduling of parties, witnesses, or advisors, the occurrence of a simultaneous criminal investigation and request from law enforcement that the College delay its investigation, need for language assistance or accommodations, College breaks, or other factors which unavoidably delay the investigation.

investigation timeframe beyond 60 days, as determined by the Investigator in consultation with the Director of Equity & Title IX Coordinator, both parties will be promptly notified.

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, the College provides a consent form that authorizes such disclosure. The party must complete this form before the College is able to distribute records with an advisor in addition to the party. 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.

ii. Formal Investigation Conclusion

1. **Draft investigation report:** At the conclusion of the investigation, the Investigator will draft a preliminary investigation report ("draft report"). The draft report is a written report of the totality of the relevant evidence gathered during the investigation. The draft report is distributed electronically with both parties, individually. The parties have an opportunity to review the report and submit feedback, corrections, or questions, including but not limited to cross-examination questions, if the parties chose to do so.
2. The parties will have within seven (7) calendar days after issuance of the draft report to schedule a meeting with the Investigator to provide feedback, corrections, or questions to the Investigator. The meeting shall be scheduled as soon as possible and no later than ten (10) calendar days after issuance of the draft report. The Investigator may extend such time as reasonably necessary.
3. 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) calendar days.
4. While the parties may disagree with the Investigator as to the form or contents of the draft report, or the relevance of evidence included or omitted, the Investigator, in consult with the Director for Equity and Title IX has sole discretion of the form and content of the final report, though the Investigator should note a party's disagreement in the final report. Parties may appeal on this basis if they wish. (See Appeals Section VII below.)

5. **Final report:** The Investigator then prepares the final investigation report that incorporates the draft report, feedback to the draft report, and an analysis and 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 Equity & Title IX Coordinator and legal counsel, 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 (see fn. 6 above) exists for 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.
6. Within five (5) calendar days of receipt of the final report, the parties must elect in writing to the Director of Equity & Title IX Coordinator whether they intend to move forward with Provost adjudication or formal panel adjudication. If one party elects or both parties elect to go to a formal panel, the formal panel will be convened by the Director of Equity & Title IX Coordinator to adjudicate the matter.

iii. 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, whether the Respondent's conduct occurred as alleged by a preponderance of the evidence, and if the conduct occurred as alleged, whether the conduct is a violation of the EO Policy. If the Provost determines that further information is needed, the Provost may remand the report to the Investigator for further questioning or investigation.

The Provost shall also determine the appropriate sanction (see Section VI below) if the Provost determines that the Respondent violated the EO Policy. Prior to determining the appropriate sanction, the Complainant will be given an opportunity to make an impact statement, i.e. how they have been impacted and what they believe would be an appropriate sanction and resolution, and the Respondent will be given an opportunity to make a mitigating factors statement and what they believe would be an appropriate sanction and resolution. Typically, the Provost shall schedule a meeting with the parties, individually, as soon as possible after determining that the Respondent 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) 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.

In Cases of Suspension or Termination of a Tenured Faculty Member

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

iv. Formal Panel (“Panel”) Adjudication and Resolution after Conclusion of Investigation

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 Equity & Title IX Coordinator.⁴ When convening a Panel, the Director of Equity & Title IX Coordinator shall choose panel members considering, but not limited to, potential conflict of interest, potential bias or perception of bias, availability, and understanding of particular issue(s) presented in a particular case.⁵

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 report, whether the Respondent’s conduct occurred as alleged by a preponderance of the evidence, and if the conduct occurred as alleged, whether the conduct is a violation of the EO Policy. If the Panel determines that further information is needed, they may remand the investigation to the Investigator for further questioning or investigation.

The Panel shall also determine a *recommended* appropriate sanction (see Section VI below) if the Panel finds that the Respondent violated the EO Policy.⁶ Prior to determining the appropriate sanction, the Complainant will be given an opportunity to make an impact statement, i.e. how they have been impacted and what they believe would be an appropriate sanction and resolution, and the Respondent will be given an opportunity to make a mitigating factors statement and what they believe would be an appropriate sanction and resolution. Typically, the Panel shall schedule a meeting with the parties, individually, as soon as possible after determining that the Respondent violated the EO Policy for parties to make such statements. However, at the Panel’s discretion, these statements may also be submitted in writing within a reasonable timeframe set by the Panel.

Upon receipt of the parties’ statements, if submitted, the Panel shall make their decision in writing within five (5) calendar days of receipt of all statements or deadline for submission and issue their

⁴ Panel members are chosen from a trained pool of four appointed tenured faculty members and four appointed exempt staff members. Typically, there shall be at least one faculty member and at least one staff member on the Panel. The Provost shall appoint four faculty members, which shall include at least one member of the Faculty Personnel and Policies Committee, and the Vice President of Human Resources shall appoint four exempt staff members. Panel members shall serve for a period of three years, subject to renewal and early withdrawal.

⁵ For example, if a case involves particular questions of academic freedom.

⁶ 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.

written decision and recommended sanction determination to the parties and 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 determination, if recommended. The Provost makes the final sanction determination. The Provost shall make the final sanction determination in writing within five (5) calendar 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.

In Cases of Suspension or Termination of a Tenured Faculty Member

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

D. Title IX Formal Investigation and Resolution with Live Hearing

The U.S. Department of Education has prescribed a specific formal resolution process that schools subject to Title IX must follow for certain sexual harassment allegations that fall within the U.S. Department of Education's definition of Title IX Sexual Harassment (see EO Policy). The Title IX Coordinator determines whether allegations fall within the U.S. Department of Education's definition of Title IX Sexual Harassment such that the formal resolution process detailed in this section must be followed. Allegations that do not fall within the U.S. Department of Education's definition of Title IX Sexual Harassment shall not follow the formal process detailed in this section and will follow the formal process detailed in Section V.C. above. If there are allegations of Title IX Sexual Harassment and non-Title IX discrimination (such as race discrimination) that within the same Complaint, the procedure in this section shall be followed.

The process detailed here does not foreclose the parties' option to choose an adaptable resolution (see Section V.B. above) in lieu of this formal process.

1. Investigation

The investigation procedures in this section shall follow the same approach and format as detailed in Section V.C. above with the following key differences:

- **Draft investigation report:** Instead of a report that contains only relevant evidence as determined by the Investigator, the draft report shall include all evidence obtained as part

of the investigation and directly related to the allegations whether relevant or not.

- The parties will be given ten (10) calendar days, subject to extension for good cause, to review and draft a written response to the draft report.
- The final report will be submitted to the parties and the hearing decision-makers at least ten (10) prior to the live hearing.

2. *Live Hearing and Cross-Examination*

The U.S. Department of Education mandates that the school must conduct a live hearing⁷ for Title IX sexual harassment allegations, and parties and witnesses must be subject to cross-examination⁸ by a party's advisor.

The live hearing shall be held by a hearing panel of three (3) trained Decision-makers of which one shall serve as the "Hearing Chair".⁹ While the hearing panel may ask questions of parties and witnesses, cross examination questions may only be conducted by a party's advisor. If a party does not have an advisor, the Title IX Coordinator shall appoint an advisor trained to conduct cross examination for the party who does not have an advisor.

a) Pre-hearing

Parties shall receive the final report, all relevant evidence to be submitted to the hearing panel, the names of persons who will participate at the live hearing, including the hearing panel, and hearing procedures, at least ten (10) calendar days prior to the hearing.

Any objection to any hearing panelist must be made in writing to the Title IX Coordinator, detailing the rationale for the objection, and submitted as soon as possible and no later than five (5) days prior to the hearing. Decision-makers will only be removed and replaced if the Title IX Coordinator concludes that a Decision-maker's perceived or actual bias or conflict of interest precludes an impartial hearing.

The live hearing is not a re-investigation of the matter. The purpose of the live hearing is for the Decision-makers and parties to directly question, through their advisor, the other party or witnesses on any unanswered relevant aspect of the allegation(s) or investigation.

⁷ "Live" means in real time, but does not require that all persons appear in the same room. The Title IX Coordinator shall work with the parties, witnesses, and hearing panel members to determine the most appropriate and most comfortable set-up for the live hearing, in which some or all involved persons may participate remotely by video.

⁸ The U.S. Department of Education uses the term "cross-examination" to describe questioning by a party's advisor. However, "cross-examination" is also a legal term of art with specific rules, custom, and practices in the context of a courtroom. Parties' advisors should not confuse the school conduct hearing for a courtroom. For purposes of the live hearing, "cross-examination" questions shall be limited to what the hearing chair considers "relevant", which can include questions challenging credibility.

⁹ The hearing panel shall consist of the same appointed and trained faculty or staff members that serve in the Section V.C. formal panel adjudication, and a third party may be hired by the College to serve as Hearing Chair.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless the witness was, for good cause, unable to participate during the investigation phase, likely has relevant information, and all parties and the hearing chair agree to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing.

During the ten (10) calendar day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. Comments a party would like to submit to the hearing panel prior to the hearing may be sent in writing to the Title IX Coordinator no later than five (5) days prior to the live hearing and the Title IX Coordinator will forward to the hearing panel and other party. Comments on the evidence a party would like to share with the hearing panel less than five days prior to the live hearing may be shared with the hearing panel during the live hearing.

b) Pre-hearing Meeting

Two to five days prior to the live hearing, the Hearing Chair may convene separate pre-hearing meeting(s) with the parties and their advisors to discuss the following:

- Appropriate decorum and questioning during the live hearing.
- Advisors may submit in advance to the Hearing Chair questions they (the parties and/or their Advisors) wish to ask of the other party or witnesses during the hearing. If so, at the pre-hearing meeting, the Hearing Chair may discuss with the party and their advisor what questions may be allowed or not allowed. This advance review opportunity does not preclude advisors from asking questions at the live hearing that may not have been previously allowed based on any new information or testimony offered at the hearing.
- The Hearing Chair may decide, based on the pre-hearing meeting with the party and their advisor, that the advisor does not have sufficient knowledge, skill, or preparation to adequately conduct cross-examination. In such a case, the Hearing Chair will notify the Title IX Coordinator and the party may either choose a different advisor or their choice or an appropriately trained advisor shall be appointed.

The Hearing Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded.

c) Live Hearing

Participants at the live hearing will include the three hearing panelists, the hearing facilitator (the Title IX Coordinator or designee), the Investigator(s) who conducted the investigation, the parties, advisors to the parties, witnesses, and anyone providing authorized accommodations or assistive services.

The Hearing Chair shall begin the live hearing with an explanation of the hearing procedure and introduce the participants. While the Hearing Chair may decide the most appropriate order of participants to call, the Hearing Chair will typically call participants to testify in the following order:

- Investigator (one investigator shall represent if more than one investigator was used)
- Complainant
- Respondent
- Witnesses

The typical order of questioning shall be made first by the hearing panel, the Complainant's advisor, then the Respondent's advisor, though the Hearing Chair may decide on a different order of questioning. If needed or requested, the Hearing Chair may allow a second round of questioning to be conducted.

The Hearing Chair shall make a relevance determination on each question asked by the advisors after the question has been asked and prior to the participant answering. If a question is disallowed, the Hearing Chair will provide a brief explanation on the basis that the question is irrelevant, redundant, or abusive.

The Hearing Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the hearing panel and the parties' advisors and the witness will then be excused.

If a party or witness chooses not to submit to cross-examination at the hearing, the hearing panel may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The hearing panelists may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions. Evidence provided that is something other than a statement by the party or witness during the investigation or at the hearing may be considered.

If conduct of a policy violation other than Title IX sexual harassment are considered at the same

hearing, the hearing panelists may consider all evidence it deems relevant whether or not the party or witnesses were subject to cross-examination.

If a party's advisor refuses to comply with hearing decorum, the Hearing Chair may pause proceedings and require the party to use a different advisor of choice or one provided by the College.

The hearing will be audio or video recorded by the College, whichever is most feasible. No other person is authorized to record.

d) Hearing Conclusion and Notice of Outcome

Each party shall be allowed, but is not required, to make a closing statement to the hearing panel at the conclusion of all testimony and questioning. All participants will then be dismissed from the live hearing.

Following close of the live hearing, the hearing panel shall deliberate all relevant evidence including the investigation report, related documentary and/or tangible evidence, and testimony from the live hearing. Within five (5) calendar days following close of the live hearing, barring an extension for good cause, the hearing panel shall make a determination, whether the Respondent's conduct occurred as alleged by a preponderance of the evidence, and whether such conduct is a violation of the EO Policy and other College policy, as applicable. If the hearing panel determines by a preponderance of the evidence that the Respondent's conduct as alleged did *not* occur by a preponderance of the evidence or did not constitute a violation of the EO Policy, the hearing panel shall detail issue their decision in writing to the parties within five (5) calendar days following close of the live hearing.

If the hearing panel determines that the Respondent violated the EO Policy, the Panel shall also determine recommended sanctions. Prior to the determination of recommended sanctions, the Complainant will be given an opportunity to submit a written impact statement, i.e. how the Complainant has been impacted and what the Complainant believes would be appropriate sanctions and resolution, and the Respondent will be given an opportunity to submit a written mitigating factors statement and what the Respondent believes would be appropriate sanctions and resolution. These statements shall be submitted to the hearing panel within the reasonable timeline set by the hearing chair.

Within five (5) calendar days after receipt of the statements or deadline for submission, the hearing panel shall issue a written decision with rationale and recommended sanction(s) determination to the Provost.

The Provost shall review the hearing panel's finding and recommended sanction(s) determination, if recommended. The Provost makes the final sanction determination in writing within five (5) calendar days of receipt of the hearing panel's recommendation or deadline for submission and shall issue the written decision and final sanction determination to the parties. The Provost shall provide to the parties, in writing, the hearing 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.

In Cases of Suspension or Termination of a Tenured Faculty Member

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

E. Resignation While Investigation Pending

Should a Respondent faculty member resign after a Complaint has been filed and/or while a formal investigation is proceeding under the EO Policy, the College will continue to move forward with appropriate process as defined in these Procedures. The personnel records of the Respondent will reflect the status and/or the outcome of the investigation, as will the Vice President of Human Resources' responses to any future inquiries regarding employment references for that individual. If the outcome of the investigation is that no policy violation occurred, the Respondent's personnel record shall reflect the Respondent's resignation and no information about the EO investigation or final determination will be made in response to future inquiries.

VI. SANCTIONS

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

- Warning – Verbal or Written
- Performance Improvement/Management Plan
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay

- 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
 - Whether the Respondent 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; or
- Any other information deemed relevant.

VII. APPEALS

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

An appeal must be submitted in writing pursuant to the following procedure:

1. Appeals must be submitted in writing to the Director of Equity & Title IX Coordinator within seven (7) calendar days of the delivery of the written determination from the Adjudication and Resolution.
2. Either party may file an appeal, but all appeals are limited to the following grounds:
 - a. **Error of Judgment:** There was a clear error of judgement where the decision was made with no reasonable basis or adequate consideration of all of the relevant circumstances.
 - b. **Bias affecting Judgement:** The Director of Equity & Title IX, the investigator(s), decision-maker(s), or Provost exhibited bias for or against the one or both parties, or had a conflict of interest, such that it affected the outcome of the matter.
 - c. **Procedural Error:** A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation

from established procedures, etc.)

- d. **New Evidence:** New evidence is information that was unknown or unavailable during the original hearing or investigation that could substantially impact the original finding or sanction. A summary of this new evidence, how it was previously unknown or unavailable, and its potential impact must be included.
 - e. **Sanction Inappropriate:** The sanction is clearly inappropriate or is not commensurate with the conduct violation.
3. The Director of Equity & Title IX Coordinator, shall appoint a trained, impartial appeal officer to review and decide the appeal. The appeal officer will be a third party hired by the College.
 4. The original finding and sanction determination will stand if the appeal is not timely. 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 appeal officer, both parties shall be granted the time extension.
 5. When a party files an appeal, the other party and, if appropriate, the Investigator, the Provost, and/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 was based. Any response to an appeal must be submitted to the appeal officer within five (5) calendar days of notice. Any responsive person may request additional time to file a response for good cause, but must request the time extension within the allotted time to file a response. If granted by the appeal officer, all responsive persons shall be granted the same time extension.
 6. 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.
 7. The appeal officer may choose to meet with a party if the appeal officer deems it necessary for review of their appeal. If the opportunity to meet is provided to one party, the same opportunity will be provided to the other party.
 8. The appeal officer may consult with the Director of Equity & Title IX Coordinator and/or other College administrators or legal counsel as needed.
 9. The appeal officer shall consider the following principles, but is not limited to such principles, when deciding an appeal:
 - The decision by the appeal officer is to be deferential to the original decision. The original finding and sanction are presumed to have been decided reasonably and appropriately.
 - Appeals are not intended to be 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.

- An appeal granted based on new evidence should normally be remanded to the Provost, or Panel, respectively, for reconsideration.
- An appeal granted based on other grounds may either be remanded to the Provost, the Panel, or the Investigator to re-open the investigation, clarify findings, or remedy errors.
- If the appeal officer grants the appeal based on inappropriate sanction, the appeal officer may either alter the sanction or remand to the Provost with an explanation to issue an appropriate sanction. Such sanction determination shall be final.
- Once an appeal is decided, the outcome is final: further appeals are not permitted (except in cases of tenured faculty termination – see Section VIII below).

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

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

12. The appeal officer shall issue their decision in writing to the parties, the Director of Equity & Title IX Coordinator, and the Provost.

13. The appeal officer's decision is final.

VIII. DISABILITY ACCOMMODATION

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

IX. REVISION

These Procedures shall be used for Prohibited Conduct defined in the EO Policy and supersedes 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 Equity & 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 these Procedures that do not materially alter the meaning or application of the Procedures. The Appropriate College Officials may also amend the 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 Procedures, 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.

These procedures are effective as of January 14, 2019.

Last revised February 1, 2020.