

Effective: September 30, 2014

## DISCRIMINATION and HARASSMENT POLICY and COMPLAINT PROCEDURES

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This policy statement describes the University's position regarding discrimination and harassment and outlines the procedures to be followed when reporting complaints of discrimination or harassment.

### POLICY AND PURPOSE

Millersville University ("the University" hereinafter) is strongly committed to maintaining a positive learning, working, and living environment for all and assuring its educational and employment environment is free from unlawful discrimination or harassment. The University does not discriminate on the basis of race, color, religion, creed, national origin, sex, sexual orientation, gender identity, gender expression, genetic information, marital status, age, disability, pregnancy, or status as a disabled veteran, a Vietnam era veteran or other covered veteran in admission and access to, and treatment and employment in, its educational programs and activities. The University will not tolerate acts of discrimination, harassment, or retaliation against or by any employee or student.

The purpose of these procedures are: 1) to prohibit discrimination, harassment, and retaliation based upon the protected classes listed above; 2) to provide definitions of discrimination, harassment, and retaliation; and 3) to set forth the procedures followed by the University when an individual alleges discrimination, harassment, or retaliation that violates University policy. Harassment is a form of discrimination and, therefore, harassment directed toward an individual or group, or experienced by an individual or group, based on membership in a protected class, may also constitute a violation of University policy.

Complaints of sexual assault, sexual violence, sexual harassment, stalking, domestic violence, intimate partner/dating violence, and other gender-based discrimination or harassment are processed under the University's Sex Discrimination and Sexual Misconduct/Title IX policy and procedures. For more detailed information about the University's Title IX program, including the roles of the Title IX and deputy coordinators, please refer to the online Title IX/Sexual Violence and Misconduct Response and Resource Guide via the Social Equity & Diversity webpage found at <http://www.millersville.edu/titleix>.

The University is committed in its support of protected free expression and principles of academic freedom. As such, legally protected expression and the proper exercise of academic freedom will not constitute unlawful discrimination or harassment.

## SCOPE

This policy and procedure applies to and covers all areas of University operations, programs, sites, and includes the conduct of employees, students, visitors/third parties, and applicants. Any individual (i.e., person, visitor, student, faculty, staff, administrator, or applicant) may seek information about unlawful discrimination or harassment or file an informal or formal complaint. Any individual may contact the Title IX Coordinator and/or the Director of Human Resources (DHR) directly for informal discussion, advice, and assistance. The Title IX Coordinator and Office of Human Resources (HR) are designated as the offices of referral for information, advice, assistance, and resolution. No other person other than those specifically designated may conduct an official investigation of discrimination or harassment. Complaints involving same-sex instances are covered under this policy – gender is not an issue.

In any incident where the respondent is a University student, the complaint will be processed through the Office of Judicial Affairs under the procedures established within the Judicial Affairs Handbook.

## DEFINITIONS

**Complaint/Incident Report:** a detailed written statement of allegations of unlawful or prohibited discrimination or harassment that is signed and dated by the complainant. Complaints submitted electronically or in writing are permissible under these procedures.

**Complainant:** the complainant is the individual (i.e., student, employee, applicant, person, or visitor) who makes allegations that prohibited discrimination or harassment has occurred.

**Discrimination:** consists of three generally acknowledged forms: 1) unlawful discrimination, 2) unlawful harassment, and 3) retaliation. "Discrimination" in general and for the purposes of this procedure, is defined as an adverse employment or academic action or decision that is based on or motivated by an individual's protected class status that is sufficiently severe, persistent or pervasive so as to have the effect of substantially limiting or interfering with one's employment or educational performance or creating an intimidating, hostile, or offensive employment or educational environment.

**Harassment:** whether verbal, physical, or visual, that is based on any of the protected classes is discriminatory. This includes harassing conduct affecting job benefits, interfering unreasonably with an individual's work performance, or creating what a reasonable person would consider to be intimidating, hostile, or offensive environment. Harassment is defined as any type of conduct directed at an individual based on his or her protected class status that is sufficiently severe, persistent, or pervasive that it substantially interferes with an individual's work environment, educational performance, participation in extra-curricular activities, or equal access to the University's resources and opportunities.

**Investigation:** is a systematic collection of all reasonably ascertainable and relevant facts in a fair and objective manner. An assigned Investigative Team conducts an investigation, including investigatory interviews of witnesses, the employee or student making the complaint and the employee or student respondent. The Investigative Team prepares an investigative fact-finding report at the conclusion of the investigation. Generally, the Investigative Team will consist of the Title IX Coordinator and DHR, however, depending on the circumstances of the complaint alternative individuals may be assigned to conduct an investigation of a complaint.

**Investigative Team:** generally, will consist of the Title IX Coordinator and DHR. Under certain circumstances, it may be appropriate to have other individual(s) to conduct a formal investigation. Investigators will have relevant and continuous training, qualifications, and experience.

**Mediation:** is a voluntary, informal resolution process in which the parties in a dispute agree to work through and resolve the dispute with the assistance of a neutral, third-party mediator(s).

**Pre-Disciplinary Conference:** is a meeting scheduled to afford an employee an opportunity to provide relevant information regarding employment matters that may result in disciplinary action against an employee.

**Protected Classes:** are groups of people who share common characteristics and are protected by law from discrimination and harassment. Protected classes include race, color, religion, creed, national origin, sex, sexual orientation, gender identity, gender expression, genetic information, marital status, age, disability, pregnancy, or status as a disabled veteran, a Vietnam era veteran or other covered veteran.

**Respondent:** is the individual against whom allegations of discrimination, harassment, or retaliation have been made.

**Retaliation:** occurs when a student or employee is subjected to adverse action in response to that individual expressing concern about discrimination or harassment or participating in the opposition or resolution of a complaint involving discrimination or harassment. See page 5 for policy on retaliation.

## **REPORTING DUTIES AND RESPONSIBILITIES**

Any individual (e.g., person, visitor, student, faculty, staff, administrator, or applicant) who is made aware of an incident or receives a report of discrimination or harassment should refer the person directly to the Title IX Coordinator or DHR for assistance immediately. The Title IX Coordinator and DHR are designated as the contacts for referral, information, advice, assistance, and resolution. No other person other than those specifically designated by the Title IX Coordinator or DHR may conduct an investigation.

Any individual receiving a report of discrimination or harassment is required to contact the Title IX Coordinator, or the DHR, or any manager, supervisor or other designated employee listed in the University Resources section (Section 8) of this policy. If the person to whom the discrimination or harassment normally would be reported is the individual accused of the discrimination or harassment, complaints should be made to another manager, supervisor, or designated resource person. This person shall in turn ensure prompt notification to the Title IX Coordinator and/or DHR. Reports of discrimination or harassment should be brought as soon as possible after the alleged conduct occurs. The Title IX Coordinator and/or DHR are designated as the persons of referral for information, advice, assistance, and resolution. No other person other than those specifically designated may conduct an official investigation of discrimination or harassment.

### **Supervisor/Manager Obligation to Report**

Any supervisor/manager who witnesses or receives a written or oral complaint of discrimination, harassment, or retaliation that occurs in University employment and/or

educational programs and activities, are required to promptly report it to the Title IX Coordinator and/or DHR. A failure to report discriminatory or retaliatory activities may constitute a policy violation. This requirement does not obligate a supervisor to keep certain communications confidential as mandated by law.

### **General Obligation to Report**

In order to take appropriate and prompt corrective action, the University must be aware of the alleged discrimination, harassment, or retaliation that occurs in University employment and educational programs and activities. A person who experiences or witnesses discrimination, harassment, or retaliation, should promptly report the information to the Title IX Coordinator and/or DHR.

## **GENERAL COMPLAINT PROVISIONS**

### **Assistance for Complainants and Respondents**

It is the University's policy to recognize and respect the rights of any individual against whom a complaint has been filed. All students and employees enjoy procedural due process rights which include notice and the opportunity to be heard. If applicable, employees accused of discrimination or harassment shall have the right to be assisted by their collective bargaining unit representative at any meeting held to discuss the complaint.

### **Confidentiality**

Good faith efforts shall be made, to the extent possible, to protect the privacy of those involved in the filing and investigation of a complaint. The University, however, is not able to guarantee absolute confidentiality. In recognition of the dignity and reputation of all individuals, the University's intent is to preserve the confidentiality of the complaint during its investigation. Disclosure of the complaint will be limited to individuals who, in the interest of fairness and resolution, are involved in the investigation. The University will take reasonable measures to protect the confidentiality of the testimony and records produced during an investigation conducted pursuant to this policy. The complainant and respondent are strongly encouraged to maintain confidentiality. The following steps should be taken to help assure confidentiality:

1. The number of persons with knowledge of the complaint shall be kept to a minimum. Only persons with a need to know shall be notified of the complaint;
2. The Title IX Coordinator or HR shall exercise discretion in the setting of dates and locations of interviews, and the placing of, and responding to, telephone calls and written correspondence related to the complaint; and
3. The Investigative Team will interview, in person, individuals named as witnesses by the complainant and respondent to the extent possible. Solicitation of comments from others, unless there is reason to believe they have relevant, first-hand knowledge about the complaint, will be avoided.

### **Interference/False Accusations**

Any person who attempts to interfere with any individual pursuing a discrimination or harassment complaint or concern may be subject to disciplinary action. Discrimination and harassment are serious matters that can impact and have far-reaching effects on the careers and lives of individuals. Therefore, knowingly making a material misstatement of fact may also result in corrective or disciplinary action.

Anyone who believes that he or she has been the subject of a false complaint of discrimination or harassment may meet with the Title IX Coordinator to discuss the allegations. The filing of a complaint that results in a finding of no policy violation is not sufficient evidence of the intent to file a false complaint.

### **Retaliation Prohibited**

The University prohibits retaliation against individuals who, in good faith, assert their rights to bring a complaint of discrimination or harassment. Retaliation against any person for reporting or complaining of discrimination or harassment, assisting or participating in the investigation of a complaint of discrimination or harassment, or enforcing University policies with respect to discrimination or harassment is strictly prohibited. Overt or covert acts of reprisal, interference, restraint, discrimination, intimidation, or harassment against an individual or group for exercising rights or performing duties under these procedures will be subject to appropriate and prompt corrective or disciplinary action.

Retaliation, if found to have occurred, is considered an offense separate from the original complaint of discrimination or harassment, and will be considered independently from the merits of the underlying complaint. Individuals who believe they have been subjected to retaliation should report the conduct to the Title IX Coordinator and/or DHR as promptly as possible.

## **INFORMAL AND FORMAL COMPLAINT PROCEDURES**

### **Pre-Complaint Review (Informal Process)**

The purpose of the pre-complaint review is to provide an individual an opportunity to discuss privately the specifics of the complaint and to receive guidance and information on the administrative procedures followed by the Title IX Coordinator – in the event a complaint is to be filed. Complaints filed pursuant to these procedures will be addressed and resolved as promptly and as practicable after the complaint is made.

It shall be the responsibility of the Title IX Coordinator to promptly determine whether the complaint is properly classified as a possible instance of discrimination or harassment based on the complainant's protected class status. If not properly classified, the Title IX Coordinator shall communicate such and may attempt other resolution strategies on behalf of the complainant. After receiving information or pre-complaint counseling, an individual may:

1. Choose not to pursue a complaint; or
2. Decide to take action directly with the respondent by verbally or in writing requesting the individual to cease the alleged misconduct; or
3. Report the matter to the respondent's supervisor or department head asking that steps be taken to ensure that the alleged misconduct ceases; or
4. Ask the Title IX Coordinator to pursue informal or formal resolution of the matter to ensure the alleged misconduct ceases.

## **Informal Process**

Informal review and consultative processes are highly desirable means for resolving discrimination or harassment complaints. The purpose of informal complaint resolution is to encourage the reporting of complaints concerning discrimination or harassment and to facilitate satisfactory resolution of the complaint. A complainant may choose to pursue the formal complaint resolution process anytime during the informal review process.

The Title IX Coordinator shall decide whether a complaint warrants an attempt at informal or formal resolution by determining whether or not the facts of the complaint, even if found to be true, would constitute a policy violation. In some cases, a formal investigation may be appropriate and must be pursued to protect all individuals to the complaint.

The respondent may be told of the identity of the complainant at this stage. Investigation is optional, since the emphasis is not on establishing guilt or innocence, but on stopping the alleged misconduct.

If deemed appropriate under certain circumstances, the Title IX Coordinator and DHR may meet with the complainant and respondent together if, in their judgment, such a meeting could foster a resolution to the issues and the complainant and respondent agree to such a meeting.

If the identity of a complainant is known and if the Title IX Coordinator has not been involved in the resolution, the Title IX Coordinator shall make follow-up contact with the appropriate manager or supervisor within a reasonable period of time to ascertain whether the matter has been resolved, ensure completion of proper documentation, and proceed to close its file upon resolution.

Informal complaint resolution may be achieved by any of the following steps:

1. Action taken by the complainant to address the matter directly with the respondent; or
2. Action to negotiate a resolution taken by the respondent's supervisor or department head, after consultation with the Title IX Coordinator and/or DHR upon the request of the complainant.
3. With the agreement of the complainant and respondent, action to negotiate a resolution through a form of alternative dispute resolution (e.g., mediation) facilitated through the University Mediation Program:
  - a. The Title IX Coordinator may designate other individuals to facilitate an alternative dispute resolution process. Mediators shall be certified and have relevant training, qualifications, and experience. Anyone designated to mediate a complaint must adhere to the appropriate procedures and confer with the Title IX Coordinator and/or DHR throughout the process.
  - b. If mediated, the mediators will help the complainant and respondent to identify, clarify, discuss, and resolve their issues, eventually guiding them toward an informed, mutual agreement. This agreement will be filed with the Title IX Coordinator.
  - c. Should this mediation not resolve the issues to the satisfaction of the complainant, he or she may file a formal complaint, in writing, within ten **(10)** business days with the Title IX

Coordinator. If appropriate, an Investigative Team shall conduct a formal investigation.

If at the any point during the informal process, it is determined that a formal investigation is to be conducted, the complainant and respondent shall have the right to present relevant information to the Investigative Team and to receive, at the conclusion of the investigation and appropriate review, a notification of outcome, to the extent permitted by law.

## **Formal Process**

### **Filing a Formal Complaint**

To initiate a formal complaint, the complainant should submit a completed and signed Complaint Form. The complainant should be able to document the following:

1. State a complaint based upon one's membership in a protected class;
2. The date of the alleged offense with as much specificity as possible;
3. Impact that the discriminatory or harassing conduct has had on the employment or educational environment, and;
4. Specify the desired outcome the complainant is seeking as a result of the complaint.

### **Notice of Receipt of a Formal Complaint**

After receipt of a completed Complaint Form, the Title IX Coordinator shall meet with the complainant(s) as soon as possible, generally no later than seven (7) business days after receiving the complaint, if needed. The purpose of this meeting is to review the complaint and clarify any issues, which may be unclear.

### **Notice of the Filing of a Formal Complaint to the Respondent**

The official letter of notice to a complainant(s) and respondent(s) of a filing of a formal complaint of discrimination or harassment is referred to as the Notice of Complaint. The Notice of Complaint will be served either personally, by regular mail or by certified mail. The Notice of Complaint will include the complainants name and the allegation(s) made.

### **Investigation**

Generally, the Investigative Team will consist of the Title IX Coordinator and DHR, however, depending on the circumstances of the complaint alternative individuals may be assigned to conduct an investigation of a complaint. The Investigation Team will then review and investigate the complaint, interview the parties to it, as well as any relevant witnesses and persons having knowledge of the situation. Both parties may suggest witnesses and other evidence for consideration. The Investigation Team may meet as frequently as necessary to complete the investigation. All interviews, meetings, telephone calls and other activities relating to the complaint will be carefully documented and clearly dated by the Investigation Team. During this process both the complainant and the respondent may be accompanied by an advocate whose role will be advisory only; advocates will not address the Investigation Team directly.

The fact-finding process is intended to be an internal investigation, not an adjudicatory process; therefore, the strict rules of evidence and criminal or civil procedure applicable in the external legal system do not apply.

After the Investigation Team has declared that the investigation is complete, they will prepare a written report which shall include the following:

1. A statement of the findings of fact;
2. A statement of the conclusions, if any, which they have drawn;
3. Any other relevant information deemed appropriate to the findings of fact.

The report will be completed and sent to the University President or his or her designee, within **14** working days of the conclusion of the investigation. Upon receiving the report from the Investigation Team, the President, or his or her designee, will review it and determine a resolution. The final decision as to the outcome of the investigation and what, if any, action to be taken shall be the President's, or his or her designee. The President, or his or her designee, shall have absolute discretion to accept or reject the findings and/or conclusions in the report in whole or in part, and shall have the authority to seek additional information as she or he deems appropriate. Any resolution by the President, or his or her designee, will be determined after she or he has conducted any required pre-disciplinary hearing. If the decision is unfavorable to the respondent, the President, or his or her designee, may take disciplinary action against him or her. Possible sanctions include, but are not limited to, written or oral reprimand, demotion, suspension, leave of absence without pay, temporary or permanent debarment from University functions, activities and memberships, or termination from the University. The President, Vice President, or his/her designee will inform the complainant and the respondent of his/her decision in writing within **30** business days of receipt of the Investigation Team's report.

### **Notice of Outcome**

After the conclusion of an investigation and determination of a finding, the President, Vice President, or his or her designee shall issue an official notice of outcome letter to both the complainant and respondent, generally no later than seven (**7**) business days after the investigations conclusion, and notice of any change in results when they become final.

### **Appeals**

If the complainant finds the resolution or administrative action unsatisfactory, he or she may file an appeal with the University President or his or her designee within five (**5**) days of being advised of the outcome of the investigation.

## **RELATED PROCEDURES**

### **Suspension or Withdrawal of Complaints**

The University may suspend its investigation at any stage if the Investigative Team receives a written resolution of the complaint agreed to by both the complainant and respondent.

A complaint may be withdrawn at any time upon receipt of a written request from the complainant. The respondent will be notified of the withdrawal of the complaint. If a complainant files a complaint with an external enforcement agency or state or federal court, the Investigative Team may cease to process the complaint internally and defer the complaint to the appropriate state or federal agency or court.

## **Dismissal of Complaints**

A complaint may be dismissed if the designated Investigative Team determines that discrimination, harassment, or retaliation has not occurred.

A complaint may be dismissed if the Investigative Team determines that the complainant has not cooperated and the action or actions of the complainant impairs or compromises the Investigative Team's ability to conduct an objective investigation. In such instances, where applicable, the Investigative Team may cease its investigation.

Willful false allegations by complainants or abuse of this process may result in actions and sanctions, including reprimand, suspension, demotion, or dismissal.

## **RESOURCES**

### **Counseling for University Students and Employees**

Counseling and support services are made available to any student or employee who believes that he or she has been subjected to any form of discrimination or harassment. Students may avail themselves to counseling services through the Center for Counseling & Human Development (717) 872-3122. Employee counseling services are available through the State Employee Assistance Program (SEAP) at 1-800-436-2301 or online at [www.liveandwork.com](http://www.liveandwork.com) - Access Code: Pennsylvania.

### **Campus Resources**

The following University resources are available to all members of the University community who seek information about University policies on equal employment opportunity, standards of conduct, informal and formal mechanisms for resolving complaints, and resources for complainants and respondents. However, the Title IX Coordinator and/or the DHR must be contacted in order to commence either a formal or an informal process to any alleged complaints. These resources for informational purposes include, but are not limited to the following:

<b>CAMPUS RESOURCES</b>	<b>LOCATION</b>	<b>PHONE</b>
President's Office	Biemesderfer Executive Center	(717) 872-3591
Title IX Coordinator	Biemesderfer Executive Center	(717) 871-4100
Director of Human Resources (DHR)	Dilworth Building	(717) 872-3017
Provost and Vice President for Academic Affairs	Biemesderfer Executive Center	(717) 872-3596
Vice President for Development & Alumni Relations	Duncan Alumni House	(717) 872-3775
Vice President for Enrollment Management	Lyle Hall	(717) 871-2250
Vice President for Finance & Administration	Dilworth Building	(717) 872-3043
Vice President for Student Affairs	Student Memorial Center	(717) 872-3594
Dean, School of Education	Stayer Education Center	(717) 872-3379

Dean, School of Humanities & Social Sciences	McComsey Hall	(717) 872-3553
Dean, School of Science & Mathematics	Caputo Hall	(717) 872-3407
Dean, College of Graduate and Professional Studies	Lyle Hall	(717) 872-3099
Director, Office of Judicial Affairs	Student Memorial Center	(717) 871-5841
Office of the Chancellor	Dixon University Center 2986 N. 2nd St. Harrisburg, PA 17110	(717) 720-4010

### **External Enforcement Agencies**

An individual who files a complaint alleging discrimination, harassment or retaliation, has the option of pursuing external enforcement. At any time during the complaint process, a complainant may choose to file a complaint with a court or external public agency responsible for enforcing the laws against discrimination and harassment, such as:

#### **Equal Employment Opportunity Commission (EEOC) (800) 669-4000**

EEOC Philadelphia District Office  
801 Market Street, Suite 1300  
Philadelphia, PA 19107-3127  
[www.eeoc.gov](http://www.eeoc.gov)

#### **Office for Civil Rights (OCR), U.S. Department of Education (215) 656-8541**

OCR Philadelphia Office, The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323 [www2.ed.gov](http://www2.ed.gov)

#### **Pennsylvania Human Relations Commission (PHRC) (717) 787-9780**

PHRC Harrisburg Regional Office, Riverfront Office Center, 5th Floor  
1101-1125 S. Front Street  
Harrisburg, PA 17104-2515 [www.phrc.state.pa.us](http://www.phrc.state.pa.us)

### **PREVENTION AND EDUCATION**

The prevention of discrimination, harassment, retaliation, and the establishment of effective procedures with due concern for everyone involved requires a comprehensive educational plan. The University provides information concerning; a) definitions of harassment, discrimination, and retaliation; b) examples of incidents of discrimination or harassment; c) sources of support and information for complainants and respondents; and d) mediation and resolution resources. Faculty, staff, administrators, and students must share joint responsibility for creating and maintaining an environment free from discrimination and harassment; therefore, the University provides an online harassment prevention tutorial which can be accessed by visiting the SED webpage found at <http://training.newmedialearning.com/pwh/millersville>. Vice Presidents, Deans, Directors, Managers/Supervisors and/or Department Chairs are required to discuss these procedures and issues with students, faculty, and staff annually.