



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 30, 2024

VIA EMAIL ONLY

Dr. Kathleen E. Harring
President
Muhlenberg College
2400 Chew Street
Allentown, PA 18104
president@muhlenberg.edu

Re: OCR Complaint Number 03-24-2071

Dear President Harring:

This letter is to advise you that the U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint filed against Muhlenberg College (the College). The Complainant alleges that the College discriminated against students on the basis of national origin (shared Jewish ancestry) by failing to respond to harassment by a professor in [redacted content]. By letter dated January 16, 2024, OCR opened the following issue for investigation:

Whether the College failed to respond to alleged harassment of students on the basis of national origin (shared Jewish ancestry) in a manner consistent with the requirements of Title VI.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Section 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, and national origin, including shared ancestry, in any program or activity receiving federal financial assistance from the U.S. Department of Education. Because the College receives federal financial assistance from the U.S. Department of Education, OCR has jurisdiction over it pursuant to Title VI.

In investigating this matter, OCR reviewed documentation provided by the Complainant and the College, including the College's non-discrimination policies and procedures; correspondence to the College community from the President; publicly available information; and documentation of training. OCR also reviewed documentation of all complaints of shared ancestry discrimination and/or harassment by a professor (the Professor) and documentation of 25 other incidents of alleged harassment on the basis of shared ancestry that were reported to the College from [redacted content]. Based upon OCR's review of the evidence produced to date, OCR recognizes the College's responsiveness to notice it received regarding some incidents that could contribute to a hostile environment for students based on national origin, including shared ancestry; however, OCR identified concerns that the College appears not to have fulfilled its obligation under Title VI to address a possible hostile environment created by the Professor for Jewish

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

students during the [redacted content] semester and that the College appears not to have consistently fulfilled its obligations under Title VI with regard to other complaints of shared ancestry harassment, treating similar conduct differently.

Prior to the conclusion of OCR's investigation, the College expressed a willingness to voluntarily resolve the complaint, and OCR determined that it is appropriate to resolve the complaint through a voluntary resolution agreement under Section 302 of OCR's *Case Processing Manual* (CPM) because OCR's investigation identified concerns that can be addressed through a resolution agreement. The basis for OCR's concerns is set forth below.

LEGAL STANDARD

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies.

Title VI's protection from national origin discrimination extends to students who experience discrimination, including harassment, based on their actual or perceived shared ancestry or ethnic characteristics, such as students of Jewish, Palestinian, Muslim, Arab, and/or South Asian descent, or citizenship or residency in a country with a dominant religion or distinct religious identity, or their association with this national origin/ancestry. The existence of a hostile environment based on national origin that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of national origin in violation of Title VI.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to take prompt and effective action to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from a recipient's education program or activity. Harassing acts need not be targeted at the complainant to create a hostile environment. The acts may be directed at anyone, and the harassment may also be based on association with others of a different national origin (the harassment might be referencing the national origin of a sibling or parent, for example, that is different from the national origin of the person being harassed whose access to the school's program is limited or denied).

The harassment must in most cases consist of more than casual or isolated incidents based on national origin to establish a Title VI violation. Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the harassment, as well as the identity, number, and relationships of the persons involved. If OCR determines that the harassment was sufficiently severe or pervasive that it would have limited the ability of a

reasonable person, of the same age and national origin as the victim, under the same circumstances, from participating in or benefiting from some aspect of the recipient's education program or activity, OCR will find that a hostile environment existed.

A recipient may be found to have violated Title VI if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a hostile environment based on national origin harassment of which it has actual or constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient. If the alleged harasser is an agent or employee of a recipient, acting within the scope of their official duties, then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment.

Once a recipient has actual or constructive notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on national origin must be tailored to redress fully the specific problems experienced as a result of the harassment.

FACTUAL SUMMARY

The College's Reporting Process and Policies

Reporting Process

According to the College, the Director of Institutional Equity, Compliance and Title IX (the Director) is the primary person responsible for responding to Title VI complaints. The College told OCR that whenever the College receives a report of a potential violation of its Equal Opportunity and Nondiscrimination Policy (EO Policy), including claims of national origin discrimination, the Director seeks to meet with the reporting party to discuss the incident, to offer supportive measures, and to discuss their options. If the reporting party wishes to make a formal complaint, the Director will evaluate the information provided to determine whether the College has jurisdiction over the incident and whether the conduct alleged, if true, would constitute a violation of the EO Policy. If the alleged conduct would not constitute a violation of the EO Policy, the reporting party is referred to appropriate resources at the College to help resolve the concern. If the conduct could constitute a violation of the EO Policy, the College follows the procedure discussed below to resolve the formal complaint.

The College's Non-Discrimination Policies

The College referred OCR to the following policies, which are available on the College's website:

Equal Opportunity and Nondiscrimination Policy ([EO Policy](#)) (Last Revised August 1, 2024)

The EO Policy states that it is intended to comply with, among other statutes, Title VI, Title IX, Section 504, Title II and the Age Discrimination Act. The EO Policy applies to all students, faculty and staff for conduct that occurs:

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

The EO Policy provides that a “substantial interest” includes:

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

The EO Policy states that third parties are not under the jurisdiction of the EO Policy but can be subject to actions that limit or terminate their access to and/or involvement with the College and College programs and property if the College determines that the third party has engaged in conduct prohibited by the EO Policy.

The EO Policy contains a section titled “Free Speech and Academic Freedom,” which states:

Muhlenberg College endorses the principles of academic freedom and freedom of speech...[t]his EO Policy shall not be interpreted to abridge First Amendment rights, nor is it meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that may include germane but controversial or sensitive subject matters protected by academic freedom as defined in this EO Policy... [w]hile members of the College community may engage in expression that, at times, may be disagreeable, or even offensive, when that speech or expression crosses the thresholds of this EO Policy, or otherwise violates the law, it is no longer recognized as falling inside the bounds of academic freedom or otherwise protected speech.

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

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

The EO Policy also states that it should be interpreted broadly to include online and cyber manifestations of the conduct prohibited by the EO Policy, which includes online harassment involving hateful speech and/or threats, and doxing to harass. It further states:

While the College may not control websites, social media, and other venues on which online harassment is made, when such communications are reported to the College, the College will assess jurisdiction and make all appropriate efforts to address the reported conduct and the negative effects of such conduct. There are many anonymous sites and applications where conduct that would otherwise violate this EO Policy can and does occur. If the College cannot reasonably determine the identity of the person violating this EO Policy, the College cannot hold them accountable. All Community Members are encouraged to report any behavior that is being posted anonymously to the respective application or web server as most of them have Community Standards or Guardrails that they abide by. Instances where the College would assert jurisdiction over one’s personal social media accounts would be when the College Community Members or Protected Classes are specifically named, tagged or identified within a post or re-post that would otherwise violate this EO Policy. Members of the College community are encouraged to be good digital citizens and to refrain from online discrimination and harassment.

The EO Policy defines discrimination as conduct based on a protected class that (1) excludes an individual from an educational or employment opportunity or program at the College, (2) denies or limits a person’s ability to participate in or benefit from the recipient’s educational or employment opportunity or activity at the College; or (3) adversely affects a term or condition of the individual’s employment, education, living environment or participation at the College.

The EO Policy defines harassment as conduct based on a protected class that is (1) severe, persistent or pervasive; (2) objectively offensive; and (3) unreasonably interferes with, denies, or limits an individual’s ability to participate in or benefit from the College’s educational, employment, social or residential programs. In determining whether conduct constitutes harassment, it will be considered from the perspective of a reasonable person in a similar situation.

Equal Opportunity and Nondiscrimination Procedures for Faculty (Last Revised August 1, 2024) and Students (Last Revised August 1, 2024) (EO Procedures)

Generally, both the Faculty and Student EO Procedure provide that supportive and interim remedial measures may be made available to either party upon notice of an alleged violation of the EO Policy. Once on notice of an alleged violation of the EO Policy, the Director will meet with the reporting party to discuss the allegation and gather information. If no reporting party is identified, the Director may decide to move forward with the College as the reporting party. If no reporting party is identified and the conduct alleged is not a potential violation of EO Policy, and/or a known respondent has not been identified, the Director may determine whether community-based education, training or other prevention or remedial actions would be appropriate.

The Faculty and Student EO Procedures provide that the parties may voluntarily agree to informally resolve the complaint in lieu of the formal investigation and resolution process. One method of informal resolution is the Restorative Process, which may involve a restorative circle, a restorative conference, restorative statements or another restorative process designed by the facilitator. Another method of informal resolution is a Negotiated Resolution facilitated by the Director where the parties can negotiate an agreement to resolve the complaint. However, the EO Procedure states that a 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 for Faculty, and suspension or expulsion from the College for Students. Further, at any time prior to the completion of the formal resolution options, the respondent may choose to accept responsibility, pause the formal resolution and resolve the matter through an interactive process with the reporting party, with the Director determining an appropriate sanction and resolution.

If informal resolution is not chosen by the parties, the complaint will proceed to formal resolution, which includes an investigation. The Student EO Procedure states that student groups must cooperate in the investigation. If, at the completion of the investigation, the College determines that the respondent's conduct occurred and is a violation of the EO Policy, the parties must elect in writing to the Director whether they intend to move forward with administrative adjudication or formal panel adjudication.

The Faculty and Student EO Procedures are the same for the most part, but for the kinds of supportive and interim measures that are available to the reporting party or respondent. Similarly, the type of possible outcomes of a negotiated resolution varies depending on whether the individual involved is a student or a faculty member. Another difference is that the Faculty EO Procedure provides for an emergency removal in the case where the respondent has been accused of a potential violation under the EO Policy, whereas the Student EO Procedure also allows for such removal or restriction of access to College property, activities or functions for students or a student group that "poses a substantial and immediate threat to the student or to others, or to the stability and continuance of College functions."

Title VI Training

The College told OCR that it routinely holds trainings and informational sessions for its students and employees regarding students' rights under Title VI. For example, the College provides Title VI training to first-year students as part of their orientation. It also provides Title VI training to Resident Advisors each year. The College also maintains a webpage with specific information about Title VI including available resources and how to make a report.

The College also told OCR that it records a podcast titled "Consent Conversations at the 'Berg,'" which is led by the Director, and is made available to all students. According to the College, it focuses on education, prevention, and dialogue around the concept of consent, but has also touched on issues relating to Title VI.

The College also reported that on January 19, 2024, the Director sent an email to all students, faculty and staff restating the College's commitment to fostering an inclusive campus environment free from bias, harassment and discrimination, for all community members to have

equal access to education, employment and supportive resources. The email included a link to a five-minute video outlining the College's Title VI process. The Director also held three trainings on January 22 and January 24, 2024, specific to Title VI, for the entire College campus. The training on January 22 was online while the two trainings on January 24 were in person.

In addition, on January 16, 2024, the College held a "Day of Racial Healing and Reconciliation Event" on campus. According to the College, the event was aimed at understanding "healing," building trust with self and others, and establishing coping skills. It was led by two counselors from the Counseling Center. The College provided OCR with a copy of the notice of the event.

The College's Title IX office provided resources and materials to students addressing (1) Hate Speech versus Free Speech, (2) Dos and Don'ts of Social Media, (3) Self Care and Social Media, (4) Doxing (what it is and how to report it), (5) Protected First Amendment Speech, and (6) Harassment versus Discrimination versus Hate Crimes. Copies of these materials were provided to OCR.

The College also provided OCR with a list of events hosted on campus to address "Restorative Community," "Holistic Well-Being," "Transformative Justice/Active Community Partnership," and a "Sense of Belonging." OCR's review of the list reflects that most of the events did not specifically address Title VI discrimination and/or harassment, or more specifically, shared ancestry discrimination and/or harassment. However, the list does note that there were three Transformative Justice/Active Community Partnership sessions on February 22 and 23, 2024 that are described as "Title VI Training." The February 22, 2024 training was "Online Open to All," while the two sessions on February 23, 2024 were held in person.

Complaints Against the Professor

The Complainant filed this complaint with OCR based on a [change.org petition](#). The petition describes the actions of an anthropology professor (the Professor) immediately following October 7, 2023. Specifically, the petition states that the Professor "began publicly making shocking and dangerous pro-Hamas statements that jeopardize the physical and psychological safety of the Jewish students on campus." The petition alleges that the Professor glorified Hamas and vilified Israel; engaged in classroom bias, hate speech, and targeted aggression to Jewish students; and engaged in cyberbullying students with her partner.

The Professor is a tenured Associate Professor of Anthropology. During the [redacted content], the College received eight shared ancestry complaints regarding the Professor. The College told OCR that the Director evaluated each complaint to determine not only whether the incident created a hostile environment, but also whether the cumulative conduct she engaged in could have created a hostile environment. Below is a summary of each report:

Report 1

On [redacted content], Student 1 filed a complaint alleging that the Professor's classroom teaching was "anti-Zionist" and biased. Specifically, Student 1 wrote:

"I have her for [redacted content]... When the news broke about the Hamas invasion of Israel, [the Professor] sent out and [sic] email to her classes saying that American news is

biased and to read/watch the news sources she sent to us in order to understand the conflict going on in Israel. [The Professor] provided us with links of sources she claimed to be the truth about the history and current news regarding the conflict. [The Professor] also said that we would start class by talking about the conflict and answering questions we have. As a Zionist and American Jew planning to move to Israel and become a citizen, I felt beyond uncomfortable and was too anxious to even go to class. I talked to [my friends]. [My friend] said that [the Professor] told the class she would support anyone who wanted to stand up for Palestine in this time. [My other friend] also said that [the Professor] spent almost the whole class discussing the topic and almost no time on class material. [My friend] said that [the Professor] claims that what Hamas is doing is wrong, but we need to look at the context of the past oppression of the Palestinian people in Israel.”

On [redacted content], the Director emailed Student 1 to request a meeting and offer supportive measures. On [redacted content], the Director and the Provost held a meeting with the Professor [redacted content].” [Redacted sentences]. The Professor stated that while she was teaching about the conflict the entire term, she did not give any assignments where students’ grades would depend on their opinion. The notes also reflect that she stated that she never wanted to make anyone uncomfortable and, therefore would avoid speaking directly about the conflict in her course moving forward.

In a supplemental data response, the College provided OCR with documentation showing that the Director was finally able to meet with Student 1 to discuss their complaint against the Professor on [redacted content]. The Director’s notes of the meeting reflect that she explained to Student 1 the definition for harassment and walked Student 1 through the informal and formal complaint process. Although the Director knew at that time that the Professor had promised that she would avoid speaking directly about the conflict in her course, there is no evidence that this information was relayed to Student 1 during the [redacted content] meeting. Rather, as a result of that meeting, on [redacted content], Student 1 submitted a complaint using the College’s discrimination/harassment formal complaint form, in which Student 1 reiterated that the Professor was using her classroom as a political platform for spreading personal bias since October 7, and that it had become “the most uncomfortable classroom environment I have ever stepped foot in.” Student 1 stated that since October 7, the Professor sent mass emails to the class directing them to news sources that she claimed were unbiased, but Student 1 found them to be biased. Student 1 also reported that the Professor took up two entire class periods “to continuously push the narrative that Hamas is doing what needs to be done to liberate people in Gaza from Israel.” Student 1 stated that the Professor said in class that “people want her fired for what she has said, but that she does not care because she has tenure and can’t be fired.” Student 1 explained in detail how the discussions made them uncomfortable and were giving them panic attacks about attending class, how they did not believe that the Professor had the right to bring her political beliefs into the classes, and had they known in advance, they would not have taken the class. [Redacted sentences]. The College told OCR that the incidents Student 1 referred to in the [redacted content] formal complaint occurred earlier in the month, before the Provost and Director spoke to the Professor on [redacted content]. In a subsequent data response on June 21, 2024, the College provided the Director’s notes of her meeting with Student 1 on [redacted content] which reflect that Student 1 said that the Professor spoke about the conflict in class on [redacted content], but did not do so after [redacted content]. Further, on [redacted content],

Student 1 emailed the Director stating, among other things, that “[the Professor] has not brought her views into class this week which has helped me feel more safe. With that being said, I am anxious that she could bring the conflict up again in class, creating an environment that promotes division between right and wrong, thus threatening my safety for being on the ‘wrong side.’” In response, the Director and Provost met again with the Professor, who, according to the College, “reiterated that she had not discussed the conflict in class since their last meeting, and would not bring it up again.” The Director then followed up again with Student 1 on [redacted content] to provide an update of the discussions with the Professor, and in response, Student 1 asked to withdraw their formal complaint.

The College told OCR that the Director concluded that the conduct alleged did not violate the EO Policy or Title VI as it was not “sufficiently severe, pervasive or offensive to deprive the student of an educational opportunity and the conduct implicated academic freedom issues.” The College asserts that the complaint was therefore resolved informally, through a discussion with the Professor.

Report 2

On [redacted content], the College received an anonymous complaint from a reporting student about the Professor, claiming that she “glorifies ‘anti-zionism’” on her Instagram, which made the reporting student and others feel “unsafe.” According to the College, because the report was anonymous and not detailed, its ability to respond was limited. However, the College told OCR that the Director reviewed the Professor’s social media and did not see anything that violated the EO Policy or Title VI. The College maintains that the postings were primarily the Professor’s political views, did not target students or religion specifically, and implicated free speech issues.

Nonetheless, as noted above, the Director and Provost met with the Professor on [redacted content]. The Director wrote in the incident report:

These reports are anonymous therefore, we lack jurisdiction to proceed under EO. However, we have been actively monitoring the situation given the number of complaints we are receiving. [The Provost] and I are in constant communication with [the Professor] about her posting to continuously remind her of her right to freedom of speech and also making sure no lines are being crossed. She is well within her right to post what she wants on her social media, she is not targeting any students or acting on behalf of the college in any way. In the Twitter post referenced she states ‘Israel does not have a right to defend its occupation’ after reviewing the IHRA [International Holocaust Remembrance Alliance] guidance this does not fall under speech that is considered antisemitic.

While the Director’s notes reflect that she considered whether the Professor’s posts were targeting students, antisemitic speech or acting on behalf of the College, there is no evidence that the Director considered whether the Professor’s posts had created or contributed to a hostile environment.

Report 3

On [redacted content], Staff member 1 filed a complaint regarding a post the Professor made on her Instagram account that day. The College explained that the Professor's office is located in the same building as the Hillel, and in passing one of the Hillel displays fundraising for "the various war efforts in Israel," the Professor took a photo of the display and posted it to her Instagram account, with the commentary: "Students raising money for genocide 😞 Grief won't be extinguished by revenge- ceasefire now; stop the ethnic cleansing of Palestinians, never again means never again for ANYONE!"

Similarly, on [redacted content], Student 2 emailed the Dean of Students to ask that the Professor have her access to the Hillel building revoked and have her relocated to another office. Student 2 stated that the Professor's presence in the building was causing discomfort amongst Jewish students, due to the Professor's deliberate entry into the Hillel section of the building to photograph a poster created by Jewish students, which was intended to raise funds for Israel. Student 2 explained that many of the students in Hillel were profoundly affected by the ongoing conflict and the Professor's post created the perception of a direct targeting of the Jewish community on campus. The Dean of Students forwarded the email to the Director, who emailed Student 2 to state that she was speaking with the Professor and hoped to have a resolution soon. The Director also sent a copy of the formal complaint form should Student 2 wish to file a complaint.

According to the College, the Director and Provost met with the Professor again on [redacted content]. The notes in the incident report state:

The Provost and I met with [the Professor] on [redacted content] regarding the concerns raised by students and staff of Hillel about her Instagram post. She defended her right to post on social media and we did not object to that, we did however make it clear that students and staff were more concerned about her entering their space and taking the photo. They felt targeted based on their ethnicity and religious views and no longer feel safe in their own space. [Redacted sentences].

The notes also reflect that the Professor stated that she was "heartbroken that Hillel is so powerful on our campus." The College told OCR that, after several meetings and discussions, it was ultimately agreed that the Professor could maintain her office in the same building but she agreed not to enter the separate Hillel space. In further email correspondence, the Provost also offered to the Professor to move her classes online, as an additional supportive measure, which the Professor accepted, as she stated that she did "not feel safe on campus right now." Also, on [redacted content], the Professor wrote to the Director and Provost expressing concern about the complaints filed against her. [Redacted sentences].

On [redacted content], Student 2 wrote to the Director that a few of their friends said that they saw the Professor in the building that day, and with her continued inflammatory and aggressive posts on social media and presence in the building, they did not feel that Hillel was a safe space. There is no evidence that anyone responded to Student 2's email.

The College told OCR that it determined that the Professor's post did not constitute a potential violation of the EO Policy or Title VI as it was not targeted at a specific individual or a specific race or religion but was in the nature of her disagreement with the policies of the Israeli government. Nonetheless, the College asserts that it took action to address student concerns by speaking with the Professor and obtaining her assurance that she would not access the Hillel space. While the College told OCR that the Director determined that "[t]he posts were not sufficiently severe, pervasive or offensive so as to deprive individuals of an educational opportunity and implicated free speech issues," this assertion is not supported by the documentation. The Director's notes in the incident report state:

I evaluated this case and determined that we do have jurisdiction as both parties are within our campus community, I then looked at what she posted and evaluated whether or not that [sic] it violated our EO policy of Online Discrimination and Harassment. [The Professor] did not tag anyone from Muhlenberg, she did not target any specific student or group. In my assessment, the post contained no hate speech, no threats, no direct harassment. After this analysis, it was deemed this was not an EO matter, however, given the number of students and staff impacted by this this [sic] action, it was determined that this action was having enough of an impact on our student's [sic] ability to engage in college activities that we met with [the Professor] to discuss supportive interim measures.

Thus, the Director's notes reflect that she determined that students were deprived of the ability to engage in college activities as a result of the Professor's actions. However, the notes do not reflect the Director considering or taking steps reasonably calculated to end or prevent the recurrence of this hostile environment resulting from the deprivation of an ability to access college activities based on shared ancestry.

Report 4

On [redacted content], the College received an anonymous report about the Professor's posts on X (f/k/a Twitter) alleging that she disparaged Israelis by asserting that they had no right to defend themselves against the Palestinians and Hamas. In the X post referenced in this report, the Professor stated, "Israel does not have a right to defend its occupation." The reporting party stated that this caused significant discomfort to Israelis and Jewish people. The College told OCR that, because the report was anonymous, its ability to respond was limited. The Director wrote in the incident report:

This was received anonymously with no screenshots or supporting evidence. We have continued to monitor [the Professor's] social media to the extent we can and while she holds very strong support of Palestine and takes issue with the State of Israel's current actions-there are no issues seen that would rise to the level of a hostile environment, intimidation, threatening, discriminatory or harassing, nor has anyone come forward to say they are unable to engage campus education, activity or employment as a result of anything [the Professor] has posted. We continue to send positive messaging to our community about supports and our continual affirmation of our DEIB values and a condemnation of any behavior that violates our policies or values.

Notwithstanding the Director's conclusion regarding Report 3, that the Professor's action "was having enough of an impact on our student's [sic] ability to engage in college activities," which is a hallmark of a hostile environment, here the Director appears to have evaluated Report 4 in isolation to reach the conclusion that "there are no issues that would rise to the level of a hostile environment."

The documentation from the [redacted content] meeting that the Director and Provost had with the Professor, described above, reflects that the Professor stated that she was "concerned how overrepresented Hillel and the Jewish community are on campus, which makes the narrative skewed." The Professor explained that she felt that she was being attacked on her Instagram page after writing a counter-message to the College President's message of support for Israel, in the College Newspaper. The Professor explained that her partner went onto her Instagram account, and "sought to defend her and without much thought, reacted on her account." The Professor acknowledged that her partner realized that the partner's "comments were out of line," so "[her partner] deleted the comments and sent messages to each student apologizing."

During the [redacted content] discussion, the Director told the Professor that her partner's planned talk at the College the next day – [redacted content] – was postponed due to the comments they made on Instagram. The notes to the incident report reflect that the Director told the Professor that the event was postponed because there were indications both "[the Professor] and [her partner] [were] battling students with laughing emoji's [sic] and other comments." However, the incident report also notes that the Professor asked the Director to speak to the students who were posting on the Professor's Instagram page to ask them to "stop coming at her as it is borderline harassment at this point," to which the Director agreed.

Report 5

On [redacted content], an anonymous reporter filed a complaint stating that the Professor "has shown disgusting support for Hamas terrorists." The College told OCR that its ability to respond was limited because the report was anonymous. However, the College maintains that it continued to actively monitor the situation for any postings that might violate its EO Policy. The Director's notes in the incident report state: "This was an anonymous filing with no screenshots or supporting evidence. We have monitored [the Professor's] social media to the best of our ability and while she is outspoken in her support of Palestine, there has been nothing harassing, threatening, intimidating posted. We continue to offer support to anyone who is identified, and we have created posts on our social media on how to engage in self-care online, including blocking and not following those whose opinions you find unsettling or offensive. This case will be closed." There is no documentation showing that the Director considered whether the Professor's posts had created or contributed to a hostile environment.

Report 6 and 7

On [redacted content], Staff member 1 complained that the Professor had made hateful comments on her Instagram page. Specifically, Staff member 1 stated that the Professor posted on her Instagram page that Israel is killing its own people, and the Professor uploaded to her Instagram account a post about "globalizing the intifada."

For the [redacted content] complaint, the Director wrote in the incident report:

I evaluated this case and determined that we have jurisdiction as both parties are within our campus community; I then looked at what she posted and assessed whether or not it violated our EO policy of Online Discrimination and Harassment. [The Professor] did not tag anyone from Muhlenberg; she did not target any specific student or group. In my assessment, the post contained no hate speech, no threats, and no direct harassment; instead, it was a saying that had no precise determination of being antisemitic at face value. Given that there is no clear guidance from anyone, including the Department of Education, I looked to Wikipedia and scholarly articles in my evaluation. From Wikipedia – Globalize the Intifada is a slogan that has been used for advocating for global activism in support of Palestinian resistance. The term Intifada refers to Palestinian uprisings against Israeli control, and the call to “globalize” suggests extending the spirit and actions of these uprisings beyond the regional context to a worldwide movement. I reviewed multiple scholarly articles, none agreeing that this phrase alone was antisemitic... I also checked the ADL webpage to see if this phrase was among their flagged hate slogans, and it is not. Upon this evaluation, it was determined that an EO Violation did not occur.

For the [redacted content] complaint, the Director wrote:

I evaluated this case and determined that we have jurisdiction as both parties are within our campus community; I then looked at what she has posted currently and assessed whether or not it [sic] any of her content violated our EO policy of Online Discrimination and Harassment. In what I saw, as no screenshots were provided with this report, [the Professor] did not tag anyone from Muhlenberg; she did not target any specific student or group. In my assessment, the posts contained no hate speech, no threats, and no direct harassment; instead, she is strongly advocating for Palestine, a cease fire and footage of bombings. It was determined that this is [the Professor's] personal social media account, she does not represent herself in anyway as holding these opinions on behalf of the college and therefore is not a violation of the EO Policy. I met with [Staff member 1] to discuss [Staff member 1's] concerns and explained the Title VI policies and asked [Staff member 1] if there were any supportive measures [Staff member 1] needed and [Staff member 1] said no.

While the notes reflect that the Director considered whether the Professor's posts tagged or targeted any student or group, or contained hate or antisemitic speech, threats or direct harassment, there is no documentation showing that the Director considered whether the Professor's posts had created or contributed to a hostile environment.

Report 8

The College told OCR that in [redacted content], after the College received notice of the OCR complaint, the College received a report that the Professor had made a “repost” to her social media page of another individual's post stating, among other things, that Zionists should be “shamed” and “not welcome[ed] into your spaces.” The College told OCR that the Director conducted an initial assessment and determined that the post could violate EO Policy since it

“arguably targets Zionists and calls for excluding them from spaces, which could include the Professor’s classes.” The College initiated an investigation into those allegations before [redacted content]. OCR has not obtained any documentation from the College regarding the investigation or its results.

Other Shared Ancestry Complaints

The College provided OCR with documentation of 25 other incidents of alleged harassment on the basis of shared ancestry that were reported to the College from [redacted content]. In every incident where the reporting party was identified, the Director conducted outreach by emailing the reporting party with information about the EO Policy and supportive measures, and requesting a meeting. Further, the evidence reflects that in response to several incidents, the College took more systemic steps to address the incident. For example, in one incident (Incident #1) where a swastika was drawn on a student’s door in [redacted content], while the College was unable to determine who vandalized the door, an email was sent to every resident on the floor regarding destructive acts of bias and how they will not be tolerated. In another incident (Incident #13), a student reported that they were being doxed by an alumnus for posting pro-Palestinian content. While the Director informed the reporting student that the College did not have jurisdiction over the alumnus, the Director subsequently created a one-page document about doxing that was distributed community-wide, to assist those on campus in understanding what doxing is and what to do when it happens.

In most incidents involving social media postings (Incident #5, #9, #12, #14, #15, #16), the Director conducted an assessment as to whether the posting created a hostile environment on the basis of shared ancestry and determined that it did not. In the incidents where the Director did not make this assessment, the social media posting was made by someone not affiliated with the College (Incident #7), the reporting student did not identify the respondent or offensive posts (Incident #16 and #17), or the Director facilitated an informal resolution like a restorative conversation (Incident #8). In one instance (Incident #9), however, while the Associate Dean determined that the social media posting did not meet the Title VI threshold for a hostile environment, the matter was referred to Student Conduct, and the respondent had an educational conversation with the Associate Dean and the respondent was required to research a current case of online hate and do a presentation. In that case, the respondent made a post on social media that referred to individuals who oppose Israeli actions as “terrorists.” [Redacted sentences] As a result of the College’s assessment, the respondent was also placed on disciplinary probation [redacted content].

The documentation also shows that the College investigated and responded to several incidents involving vandalism and/or graphic messages. For example, in Incident #19 and #22, a non-affiliated individual filed a complaint about chalkings that the Middle Eastern Student Association (MESA) wrote on the ground as part of a College authorized event, which stated “from the river to the sea, Palestine shall be free,” and “to exist is to resist.” In that case, the Director determined that the chalkings did not constitute hate speech, based on research that the Director conducted regarding the statements. In another incident (Incident #23), members of MESA filed a complaint because a student ripped up a poster board at the above-referenced MESA event, and threw water on the chalkings on the ground. In that case, the respondent was advised by the Director that their conduct was a violation of Title VI and a Hate Crime under the

Clery Act. The College imposed no contact orders between all the students, arranged for alternative housing for the MESA members involved, and engaged in informal resolution [redacted content].”

By contrast, in another incident (Incident #11), where the respondent tore down posters of Israeli hostages on another student’s door, and made posts on social media directly referring to Jewish students, while the College conducted an investigation and implemented no contact orders, no other action was taken against the respondent. While the College told OCR that the student who put up the posters took them down after peers pressured the student, the documentation provided by the College does not support this assertion. Rather, the statement provided by the student to public safety reflects that the respondent took the posters down and ripped them despite the student’s objections. Further, in investigating the incident, public safety received screenshots of posts made by the respondent on Instagram, including posts in which the respondent stated, [redacted sentences]. There is no evidence, however, that the College addressed the respondent’s actions in tearing down the posters or in making the Instagram posts.

Similarly, in Incident #21, members of Hillel reported to the College that the respondent vandalized an installation in honor of the hostages held by Hamas, at a Hillel-sponsored event. In that case, the Hillel members who made the report indicated that they were not interested in a formal investigation as the respondent acknowledged their involvement and was apologetic. The College informed OCR that the College “held multiple meetings with Hillel leadership about the situation and again (following the empowerment model) allowed Hillel to dictate the resolution.”

Publicly Available Information

During OCR’s investigation, OCR obtained information regarding additional incidents from publicly available sources:

March 3, 2024

On March 3, 2024, graffiti (“Free Palestine”) was etched onto a brick wall on campus. In response, the Dean sent a community-wide email addressing the vandalism and reminding students that vandalism is a violation of the Student Code of Conduct.

March 27, 2024

An [article](#) posted in the College newspaper (Muhlenberg Weekly) described an incident that occurred on March 27 when the College Hillel hosted Amanda Berman, founder and executive director of Zioness. The article describes how Berman was invited to campus as a guest speaker for an event that was structured as a conversation moderated by two students, followed by an open question and answer session. The article states that the crowd who attended “was not fully in support of Berman’s views – a large number of audience members were holding signs expressing pro-Palestinian sentiments and wearing the *keffiyeh*.” The article further explained that the protestors attempted to have the event canceled by putting pressure on the administration. According to the article, the “Q&A portion morphed into a debate-like forum and the event abruptly ended.” Further, during the event, an incident occurred as audience members were leaving the room. According to the article, the Dean was made aware that there “was a

back-and-forth altercation... it has been followed up on by Campus Safety.” The article reported that at the end of the event, a group of students approached the Dean and Associate Dean to “express both their disgust and concern with how the College has been handling tensions on campus. As [the Dean and Associate Dean] began a dialogue with the concerned students, the crowd grew and took over much of the Fireside Lounge...”

In a subsequent opinion [piece](#) published in the same newspaper on March 30, the authors stated that the March 27 article was misleading, biased and inaccurate, as “some people from Muhlenberg and some from elsewhere – hijacked our event which was intended to be an educational presentation with standard opportunities for Q and A...the protestors interrupted with disruptive heckling throughout the talk. When Amanda Berman referenced the sexual assaults of Israeli and Jewish women by Hamas, many members of the audience laughed.”

May 2024

Muhlenberg Jewish Voice for Palestinian Liberation (JVPL), an organization created in April 2024 that defines itself on Instagram as “Muhlenberg College’s Jewish anti-Zionist group organizing for dignity, equity and freedom for all,” organized an on-campus protest on May 2, 2024.

On May 4, 2024, JVPL organized another protest, in response to Hillel’s advertisement of a Yom Ha’Aztmaut party in recognition of Israel’s Independence day. The JVPL’s Instagram post regarding the protest stated, “No Parties for Ethnic Cleansing. End the Ongoing Nakba,” and stated that the protest was going to be held in the “Side Alley Next to Hillel.” Following the protest, JVPL posted several pictures to its Instagram account of students who stood outside of the Hillel to “protest Hillel’s Israeli Independence Day.”

Proactive Efforts by the College

The College told OCR that since October 7, 2023, it has provided support for members of the College’s Jewish community, as well as other groups such as Palestinian and Islamic students. For example, on October 7, the Office of Religious and Spiritual Life wrote to the College Community to provide “an acknowledgement of severe pain” in light of the “historic human-inflicted tragedy in Israel and Palestine that continues to unfold.” The email provided information about support, including an on-call counselor available 24 hours a day.

On October 10, 2023, the College President issued a statement:

Over the weekend we learned of the horrific attacks and atrocities in Israel. The terrorism Hamas perpetrated on Israel and the Jewish people is deplorable. The conflict in the Middle East has played out over millennia, but no matter the history Hamas’ decision to invade a sovereign nation and murder its citizens was an evil one. The loss of thousands of lives is a travesty. We abhor the violence that sustains this conflict, mourn the loss of so many lives and condemn this terrorism.

We recognize that members of our community are worried about their own safety as well as the safety of friends and family in the region...Please know that we remain vigilant about the security on our campus and the well-being of our community. To that end, if

you need support of any kind as this situation unfolds, please seek out the resources offered through the Counseling Center, Religious & Spiritual Life, the Office of Diversity, Equity, Inclusion and Belonging, and, for faculty and staff, Muhlenberg's Employee Assistance Program (EAP).

Muhlenberg's mission encourages, welcomes and celebrates a multitude of faith traditions and spiritual perspectives, including those of our Jewish, Israeli, Muslim and Palestinian students, colleagues and friends. Our commitment to diversity, equity, inclusion and belonging enjoins us to recognize and value intersecting identities, among them race, ethnicity and religion...

On October 12, 2023, the Dean of Students wrote to Muslim and Palestinian identifying students and Jewish identifying students to share ongoing support, care and resources, and to inform the students that additional security measures were being put in place, including additional patrols on and around campus. She also included a link to the College's policy concerning the right to peaceful demonstrations and stated that "if any group intends to demonstrate, they can connect with Campus Safety and they will be happy to provide an escort or an officer to be on standby during the event."

On October 13, 2023, the Dean of Students wrote to all students, offering to meet that day, and acknowledging that the College's Jewish, Muslim, Israeli and Palestinian students were experiencing "an intensified level of fear, anxiety, frustration and grief right now." The Dean also laid out her four priorities, which included: (1) Care for each community member's well-being, (2) Campus security, (3) Educating Students with the Religious & Spiritual Life office holding listening circles and other educational opportunities moving forward, and (4) Upholding College policy. The email included links to the College's relevant EO Policy, policy on posting of signs and notices, Code of Conduct, and Right to Dissent and Demonstration policy.

On November 1, 2023, the College President sent another community-wide email, acknowledging the emotion and rhetoric on the subject of the Israeli-Gaza war had been heated and, "in some cases, has turned violent." She reiterated that she was inspired by the College community's grace, care and mutual respect during organized listening circles, conversations with faculty and staff, incisive reporting in the College newspaper and other events. The President also reiterated that she was committed to "providing a safe environment for every member of our campus community, including additional security and campus safety resources," and also that hatred and bigotry had no place on campus, nor did threats of violence. She encouraged anyone who faced such harassment or discrimination to use available reporting resources.

LEGAL ANALYSIS

OCR recognizes that the College has taken many steps to address incidents that may have created a hostile environment based on shared ancestry on campus, including through multiple community-wide emails from the President and the Office of Religious and Spiritual Life. The Dean of Students also wrote targeted emails to the Muslim, Palestinian and Jewish identifying students to share ongoing support, care and resources. Additionally, in response to specific concerns raised in several complaints, such as a complaint about doxing, the College developed

brochures to distribute campus-wide to inform students about best practices for social media, doxing, protected speech, and harassment and discrimination. To further address the potential hostile environment, the College distributed a five-minute video outlining the College's Title VI process, and held three trainings specific to Title VI. And the College's nondiscrimination policy and procedures comprehensively address nondiscrimination obligations, including with respect to the impact on education programs of off campus and social media conduct, informing the College community of College policy for addressing discrimination.

OCR's review of College records raises specific concerns regarding the College's fulfillment of its stated policies in compliance with Title VI. Although the College represented that the Director evaluated each complaint to determine whether the incident created a hostile environment and also whether the cumulative conduct created a hostile environment, the documentation provided by the College does not support this assertion. Specifically, although the College provided OCR with documentation of eight shared ancestry complaints regarding the Professor, the documentation reflects that the Director considered whether the Professor's conduct had created or contributed to a hostile environment in at most two of those incidents (Reports 3 and 4), the second of which reflects that the College did not evaluate the totality of the circumstances, which is a required element of the Title VI standard, after having recognized the existence of a hostile environment resulting from the prior report. In another (Report 8), the College determined that the Professor's conduct could violate EO Policy, but the College did not provide OCR with any documentation of this incident or the College's assessment. In all other incidents involving the Professor, the Director's notes for each incident reflect that she considered whether the Professor's posts and/or conduct targeted students or contained hate or antisemitic speech as opposed to private social media posts expressing political speech. However, harassing conduct need not target a particular person in order to create a hostile environment for a student or group of students in a school program or activity.

Additionally, Title VI requires the College to take steps reasonably calculated to redress any hostile environment related to shared ancestry affecting the education program or activity, if one exists, even if the conduct occurs on private social media and involves political speech. Students had reported to the College significant anxiety and fear resulting from the Professor's comments both during class and in social media, impacting the students' access to education, and in at least one instance the Director, on behalf of the College, specifically determined that the Professor's conduct "was having enough of an impact on our student's [sic] ability to engage in college activities," which is a hallmark of a hostile environment. While the College could not discipline protected speech, the College nonetheless has a Title VI obligation to ensure that a hostile environment based on national origin does not exist or persist in its education program. The College documentation does not reflect the College effectively considering or complying with this Title VI obligation.

OCR is also concerned that the College appears not to have consistently fulfilled its obligations under Title VI with regard to other complaints of shared ancestry harassment. For example, whereas the College treated ripping up a poster board at a MESA event and throwing water on chalkings written on the ground stating "from the river to the sea, Palestine will be free" among other phrases as a Title VI violation (Incident #23), the College did not treat tearing down posters of Israeli hostages from a student's door and social media posts directly referring to Jewish students as Title VI violations and took no action against the respondent (Incident #11).

Because the evidence reflects inconsistent responses to similar conduct, OCR is concerned that the College has not taken action reasonably calculated to end or redress potentially hostile environments of which the College has notice.

RESOLUTION AGREEMENT

Under Section 302 of OCR's [Case Processing Manual](#), allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In this case, the College expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. The College signed the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegation raised in the complaint.

Pursuant to the Agreement, the College will:

- Provide annual Title VI training to all employees and staff responsible for investigating complaints and other reports of discrimination, including harassment, based on shared ancestry or ethnic characteristics (which includes antisemitism) to ensure thorough and impartial investigations, including how to determine whether an incident created a hostile environment;
- Conduct a climate assessment for students and staff to evaluate the climate with respect to shared ancestry, provide OCR with a report summarizing the results, and a description of further action(s), if any, the College proposes to take in response to the assessment results;
- Provide OCR with documentation sufficient to show that the College has completed an investigation(s) into whether actions by the Professor, based upon the totality of the circumstances, created a hostile environment for Jewish students on campus;
- Review the College's response to each report of discrimination and/or harassment it received on the basis of shared ancestry during the [redacted content] school to ensure that the College's response was consistent. If the College's review reveals that it did not respond consistently, the College will determine appropriate remedies or supportive services to remedy the inconsistent application of its policies and procedures; and
- Provide OCR with information regarding its investigations of reports of alleged discrimination, including harassment, on the basis of shared ancestry for the 2024-2025 and 2025-2026 academic years.

CONCLUSION

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Thank you for your cooperation during the resolution of this complaint. If you have any questions, please contact Amy Niedzalkoski, Chief Attorney.

Sincerely,

/s/

Beth Gellman-Beer
Director, Philadelphia Office
Office for Civil Rights