
Academic Freedom and Tenure: Muhlenberg College (Pennsylvania)¹

(APRIL 2025)

I. Introduction

On January 17, 2024, Dr. Maura Finkelstein, associate professor and chair of the Department of Sociology and Anthropology at Muhlenberg College, was driving home after the first day of spring semester classes when she received a phone call from Dr. Laura Furge, the provost, who informed her that the Office for Civil Rights (OCR) of the US Department of Education had opened an investigation at the college and that an OCR investigator would be contacting her soon. The investigation, Professor Finkelstein later discovered, had been triggered by an anonymous complaint, based on a Change.org petition, about an unnamed “Jewish anti-Zionist professor”—but obviously Professor Finkelstein—who had “written articles praising Hamas and engaged in other behavior that students and alums” considered “harmful to Jewish students.”²

That same night, Professor Finkelstein reposted on Instagram an anti-Zionist statement by the Palestinian American poet Remi Kanazi.³ A week later, on January 24, Professor Finkelstein received written notice from Ms. Jennifer Storm, director of the college’s Office of Equity and Title IX, that she was initiating an investigation into allegations that Professor Finkelstein’s Instagram post had violated the college’s equal opportunity and nondiscrimination policy. Director Storm’s letter also informed Professor Finkelstein that, “in an effort to deter any perceived or actual harassment, discrimination, or retaliation, the College [was] placing [her] on paid administrative leave for the duration of the investigation.” In an email that same day to Dr. Finkelstein’s students, Provost Furge wrote, “Your professor is on leave. I am working to identify a professor or visiting instructor to continue teaching your class.”⁴ That same evening the provost informed the other members of the sociology and anthropology department that Professor Finkelstein was being placed on administrative leave and offered Professor

1. The text of this report was written in the first instance by the members of the committee of inquiry. In accordance with Association practice, the text was then edited by the staff and, as revised with the concurrence of the committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the administration of Muhlenberg College, the subject faculty member, and other persons directly concerned in the report. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff. The full text of the administration’s March 24, 2025, response to the draft text is printed in the addendum, as requested by President Harring.

2. Andrew Lapin, “Search Our Database of Title VI Discrimination Investigations at Schools Colleges Since Oct. 7,” *Jewish Telegraphic Agency*, February 29, 2024, <https://www.jta.org/2024/02/29/united-states/search-our-database-of-title-vi-discrimination-investigations-at-schools-and-colleges-since-oct-7>.

3. The repost, which, as an Instagram story, automatically expired after twenty-four hours, read, “Do not cower to Zionists. Shame them. Do not welcome them in your spaces. Do not make them feel comfortable. Why should those genocide loving fascists be treated any different than any other flat out racist. Don’t normalize Zionism. Don’t normalize Zionists taking up space.” Remi Kanazi (@Remroum), X, January 16, 2024, <https://x.com/Remroum/status/1747449373829562835>.

4. Katherine Conlon, “Muhlenberg Under Investigation; Professor Placed on Leave,” *The Muhlenberg Weekly*, February 1, 2024, <https://muhlenbergweekly.com/news/muhlenberg-under-investigation-professor-placed-on-leave/>.

Finkelstein's three spring semester courses to a visiting professor.

On May 30, 2024, Provost Furge wrote to inform Professor Finkelstein that an "adjudication panel" had recommended termination of her tenured appointment "for just cause," effective immediately, and that the college's president, Dr. Kathleen E. Harring, had concurred. A week later, Professor Finkelstein appealed the termination to an external "appeal officer" retained by the administration, as permitted under the college's equal opportunity policy. That appeal proving unsuccessful, she filed a request for review with the Faculty Personnel and Policies Committee (FPPC) on August 13. On January 22, 2025, she received notice from the FPPC that the committee had unanimously found that "the administration [had] not [met] the burden of proof by a preponderance of the evidence that the actions of Dr. Finkelstein met the conditions for termination for cause" and had sent this finding to President Harring, along with a recommendation, also unanimous, that the dismissal action be reconsidered. In early April, as this report was being finalized for publication, the AAUP's staff learned that President Harring had on March 31 issued the following "determination" in response to the FPPC's finding and recommendation: "Dr. Finkelstein [had] acted in a manner contrary to College policy that could be viewed as flagrant disregard of the policies and rules of the College. Having received Dr. Finkelstein's voluntary resignation from her tenured faculty position at the College, there is no reason to issue resulting actions related to Dr. Finkelstein."⁵

II. Muhlenberg College

Muhlenberg College, located in Allentown, Pennsylvania, is a religiously affiliated liberal arts institution with an enrollment of approximately

1,700 undergraduate students. Of those enrolled students, approximately 25 to 35 percent are Jewish.⁶ The college was founded in 1848 as the Allentown Seminary and is affiliated with the Evangelical Lutheran Church in America. In 1867, after having operated under several different names, the college was renamed Muhlenberg College in honor of the Reverend Henry Mühlenberg (1711–87), a German-born clergyman who was one of the founders of the Lutheran church in the United States. Accredited by the Middle States Commission on Higher Education, the college's website describes its mission as "developing independent critical thinkers who are intellectually agile, characterized by a zest for reasoned and civil debate, committed to understanding the diversity of the human experience, able to express ideas with clarity and grace, committed to lifelong learning, equipped with ethical and civic values, and prepared for lives of leadership and service." Dr. Harring, formerly a professor in the college's psychology department, was appointed as the institution's thirteenth president in 2019, the first woman in that role. Muhlenberg College is governed by a twenty-four-member board of trustees chaired, since 2022, by Dr. Lance R. Bruck, vice president and chair of obstetrics, gynecology, and women's health at the Jersey City Medical Center.

III. Chronology of Events

Professor Finkelstein contacted the American Association of University Professors shortly after having received the January 24, 2024, notification from Director Storm of her suspension with pay and banishment from campus pending an investigation into her January 17 Instagram post. Initially, there was no reporting party except for the administration, based on its having received "several reports from students, staff, parents and other campus members of possible violations." By January 30, a student's name was added to the complaint in an amended notice of allegations.

While these complaints about her social media post were the immediate catalyst for the equal opportunity investigation, Professor Finkelstein had informed the AAUP's staff of her suspicion that the incident that may have "started all of this" was instead her

5. Under section 4.3.1.2.r of the faculty handbook, "When the College is in regular session, within 21 [working] days of receipt of the FPPC's findings and recommendation, the President will respond to the faculty member and to other affected parties with his/her written determination of the issues, the rationale, and resulting actions." Since the FPPC issued its findings and recommendation on January 22, the deadline for the president's response was February 21. President Harring responded on March 31, more than a month after the deadline (and more than a month after Committee A approved the draft text of this report for publication). We understand, however, that negotiations between the Muhlenberg administration and Professor Finkelstein's attorney, which eventually resulted in a resolution satisfactory to both parties, was the reason for the delay.

6. Ira Blum, "Muhlenberg College Hillel: Top 10 FAQ from Prospective Students and Families," <https://www.muhlenberg.edu/media/contentassets/pdf/campuslife/hillel/faqs-for-students-and-families.pdf>.

response to an October 10, 2023, email that President Harring had sent to the college community regarding the October 7 attack. The president's email stated in pertinent part:

Dear Muhlenberg Community,

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. . . .

In time, there will be opportunities to discuss the history, actions, and implications of this violence. Yet, in the darkest, most inhumane moments, individuals across the ages have come together in ways that shine a light on the positive power of humanity.

Professor Finkelstein immediately responded on the email thread⁷:

Dear Muhlenberg Community,

As retaliation against Hamas, Israel is currently bombing Gaza, a tiny strip of land, home to 2.5 million people. The majority of these civilians are children. Families continue to live under siege, as Israel bombs their homes, schools, houses of worship, streets, and more. Since Saturday morning, the Israeli military has already killed nearly 700 Palestinians in Gaza, including 140 children. Israel announced yesterday it was completely cutting off all food, fuel, and electricity to Gaza amid airstrikes of unprecedented intensity, launched in response to Saturday's surprise attack by Hamas militants on southern Israel.

There is no doubt that Saturday's surprise attacks are devastating. We must mourn all civilian deaths. These are terrifying times. But we cannot mourn without also acknowledging the fact that Israel is a settler colonial state, Palestinians have been living under occupation

since 1948, and Gaza is an open-air prison, the densest and perhaps most dangerous place in the world. On average, more than one Palestinian has been killed by the Israeli State each day this year. For Palestinians in Gaza, Israel's acts of revenge will likely result in absolute annihilation. The Israeli government calling Gazans "human animals" should be chilling to us all.

If you would like to know more about the context of Gaza, I urge you to watch this short film: <https://www.youtube.com/watch?v=bmRPkfAN2EU>.

The United States is the most anti-Palestinian country in the world, and our media rarely presents the occupation as it is. If you are looking for news sources invested in truth, I highly recommend Democracy Now!'s coverage. Muhlenberg can be a hard space to talk openly about and grieve Palestine and Palestinians. Please know that there are safe spaces on campus—feel free to reach out to me if you need to.

Yesterday was Indigenous People's Day. Palestinians are Indigenous to the land they have been exiled from. I stand in solidarity with everyone fighting for freedom, justice, and liberation, and I pray that Palestine will be free.

That same day Professor Finkelstein emailed the students in her courses on urban anthropology and anthropological ethnography to inform them that both classes would discuss the October 7 events at their next meeting and to invite them to email her questions "if they didn't feel comfortable asking them in front of other students." Regarding the ensuing classroom discussion, Professor Finkelstein wrote to Association staff that it

was not just a "let's talk about current events" interlude but instead critical engagement with our class material. I always include material about Palestine in my classes (and have since before I was hired by Muhlenberg—I have been teaching this material for thirteen years). Last semester I taught Urban Anthropology and Anthropological Ethnography (our methods course). The week prior, over the week of October 3-5, my Urban Anthropology students had watched the short film *Rebel Architecture* by Israeli architect Eyal Weizman. We also read the article "Driving While Palestinian in Israel and the West Bank: The Politics of Disorientation and the Routes of a

7. Until November 2023, faculty, staff, and administrators had the ability to post emails and responses on an unmoderated email list.

Subaltern Knowledge” by anthropologist Amahl Bishara, in the peer-reviewed and respected journal *American Ethnologist*—because of this, it was important that we discuss the context of occupation, infrastructure, and mobility in order to connect the class material to current events. . . . Because we had studied the Nakba and oral history in Anthropological Ethnography, our core methods class, it was critical to talk about how the Nakba was ongoing today and the ways the events of October 7 were not new, but instead part of an ongoing history.

On October 16, according to Professor Finkelstein, she responded in writing to questions about the war in Gaza at the request of a reporter from the student newspaper. She also posted her responses on social media, anticipating (correctly) that the reporter would not include them. She reports having received later that afternoon an email from Provost Furge requesting her attendance at an in-person meeting the next day “to follow up on some bias reports that have come to me through Title IX from students.” Professor Finkelstein recalls that at that meeting the provost informed her that multiple students had complained to Director Storm about her class discussion of the war in Gaza, which, they alleged, had made them feel unsafe and had created a hostile environment in which they were reluctant to disagree with her for fear of jeopardizing their grades. The provost also told Professor Finkelstein that her October 10 email response to the president’s message had deeply upset Jewish students, faculty, and staff.

That same day, Professor Finkelstein reports, she began receiving a flood of critical and sometimes hateful emails, many of which stated that she should be fired, from people who identified themselves as alumni, donors, and community members. Provost Furge and Director Storm proceeded to hold a series of meetings with Professor Finkelstein about her teaching and the content of her classroom discussions. Subsequently, however, the administration informed her that a student who had lodged a complaint about the October 12 classroom discussion had withdrawn it and that they accordingly considered the matter closed.

On October 21, Professor Finkelstein recounts, she was shocked to discover outside her classroom in the college’s Leffell Center a fundraising table with a poster declaring in large capital letters, “You can help raise money for the various war efforts in

Israel.”⁸ On the poster were three QR codes to scan for making financial contributions to various groups. The text accompanying one of the codes stated, “The money raised will go to Israel’s Navy Seals and the IDF.” Also on display was a poster of a kidnapped Israeli American, captioned “kidnapped,” with a note advising viewers to “take a photo of this poster and share it.” The wall on either side of the display was almost entirely covered with similar posters containing photographs of kidnapped Israelis. The table and wall display were sponsored by the campus chapter of Hillel International, a Jewish student organization that shares the building with the sociology and anthropology department and three classrooms.

Professor Finkelstein emailed a photograph of the display to the president, provost, college chaplain, and director of Hillel with a message stating that she objected to the fundraising campaign on the grounds that students should not be asked to fund “genocide” and asked that the display be removed. She reports being told by Provost Furge that Hillel students had the right to fundraise for any cause they chose. Professor Finkelstein subsequently posted the photograph on Instagram accompanied by the following text: “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!” She did not tag Muhlenberg or disclose where the photograph was taken. On October 29, a group purportedly consisting of alumni posted a Change.org petition titled “Muhlenberg College Must Remove Professor Finkelstein for Dangerous Pro-Hamas Rhetoric” that quickly garnered more than eight thousand signatures. The petition—which featured the Muhlenberg logo—accused Professor Finkelstein of “blatant classroom bias against Jewish students.” If the administration did not dismiss her, the petition threatened, “we will not donate to the college or provide any form of support” and “will send this document to every Jewish High School in America to ensure that they know Muhlenberg is not a safe place for Jewish students.”⁹

8. The Leffell Center for Jewish Student Life (previously named Hillel House) and three classrooms are located in the top two floors of a building that also houses the Department of Sociology and Anthropology on the ground floor (each entity has a separate entrance into the building).

9. <https://www.change.org/p/muhlenberg-college-must-remove-professor-finkelstein-for-dangerous-pro-hamas-rhetoric>.

Following its posting, several students and staff members complained to the college's equal opportunity office about Professor Finkelstein.

At a November 6 meeting, Provost Furge and Director Storm told Professor Finkelstein that they had been receiving complaints that she was targeting student groups and informed her that she was barred from the Leffell Center, the building that houses the sociology and anthropology department, while the complaints were under investigation. According to Professor Finkelstein, administrative officers informed her that she could move her office to another building where she also held classes, but she declined the offer. She further reports that upon expressing her discomfort with coming to campus without being permitted to enter the building where her department and office were located, these same officers told her that she could teach online.

On November 8, members of the sociology and anthropology department—Professors Benjamin Carter, Janine Chi, and Casey Miller—met with the provost, along with Professor Finkelstein, to object to their colleague's banishment from the department's offices and to describe how the administration's action had affected their academic freedom.¹⁰ On November 10, Provost Furge informed Professor Finkelstein that sixteen students had filed complaints regarding her social media posts about the Hillel fundraiser, but the provost also told her that she could return to her office.

Up to this point administrative officers had dismissed the complaints against Professor Finkelstein because they did not regard them as violating college policy.

On January 11, 2024, the Muhlenberg administration began receiving thousands of robot-generated emails demanding that Professor Finkelstein be fired. Then, on January 17, as noted previously, the provost called Professor Finkelstein to inform her that the Office for Civil Rights of the US Department of

Education had opened an investigation of the college based on the Change.org petition.¹¹ That evening, Professor Finkelstein reposted Palestinian American poet Kanazi's statement on Instagram, an action that would subsequently become the sole stated basis for her dismissal.

In a January 24 meeting, Provost Furge informed Professor Finkelstein that she was suspended with pay, locked out of her email account, and barred from campus pending an investigation to be conducted under the auspices of the Office of Equity and Title IX. That same day Professor Finkelstein received written notice of the investigation from Ms. Storm. The letter specified that the college was the complainant ("reporting party") and that the "College may infer" that Professor Finkelstein may have violated the college's antidiscrimination policies by posting on Instagram a "statement calling for 'shaming Zionists, not welcoming them into your spaces, making them feel uncomfortable, not normalizing Zionists, calling them racists, and not allowing Zionists to take up space.'" The college, Ms. Storm wrote, was therefore obliged "to gather evidence, investigate the allegations, and summarize all relevant evidence in a final investigation report with recommendations to either a panel or the Provost for a final determination, subject to appeal." On January 30, Director Storm sent Professor Finkelstein an amended notice of the investigation that added a named student to "the College" as a complainant.¹² The student's formal complaint stated, "Maura Finkelstein posted on her [Instagram] story that Zionism is racism, and she posted calls to shame Zionists. The statements she made violate federal and state laws against discrimination based on ancestry, religion, and national origins. She has clearly said she will discriminate against Zionists. Zionism is the Jewish right and belief to self-determination in

10. In an email message to Professor Finkelstein dated November 21, Director Storm and Provost Furge denied that Professor Finkelstein was ever barred from her office. In fact, they claimed in that email that the meeting between the department members and themselves on November 8 took place on Zoom and that Professor Finkelstein was in her office during the meeting. All members of the Department of Sociology and Anthropology who attended this meeting dispute this account of the meeting. They informed this committee of inquiry that the meeting took place in person in the provost's office because Professor Finkelstein was not permitted to be in her office.

11. The Department of Education's Office for Civil Rights notified President Harring by letter of September 30, 2024, that the department had resolved the complaint. The resolution letter does not name Professor Finkelstein but identifies her position and discipline and contains a link to the Change.org petition. See <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/03242071-a.pdf>.

12. According to interviews conducted with the student by D. Stafford & Associates, the firm retained by the college to investigate Professor Finkelstein, the student complainant had never met Dr. Finkelstein and had learned of her Instagram post from a Hillel staff member who was also a Jewish Agency for Israel fellow at Muhlenberg. He, along with the director of Hillel, had been monitoring Professor Finkelstein's social media activity.

their historical and national homeland. I am Jewish and a dual citizen of the US and Israel. Her hate-filled Discriminatory statements that clearly say she will discriminate against Zionists affect me personally because I am Jewish and Israeli.”

Muhlenberg College retained a consulting firm, D. Stafford & Associates, to investigate the complaint against Professor Finkelstein. According to D. Stafford’s sixty-page final report, dated April 9, 2024, the purpose of the investigation was to determine whether Professor Finkelstein had violated the college’s equal opportunity and nondiscrimination policy, specifically its provisions prohibiting “bias-related conduct,” “online discrimination and harassment,” “discrimination (based on protected classes),” and “harassment (based on protected classes).” In the section titled “Analysis and Recommendation,” the report states the following conclusions:

1. Prior to reposting the anti-Zionist statement on Instagram (which the report refers to as the “‘Do not cower’ post”), “Dr. Finkelstein did not threaten or harass anyone.”
2. Professor Finkelstein did not use her post criticizing the Hillel fundraiser to “harass or threaten anyone.”
3. While “no . . . data shows” that Professor Finkelstein “excluded anyone” from her courses, the “‘Do not cower’ post encouraged discriminatory behavior” because students could interpret it to suggest that if they took one of her courses, “they [might] face discriminatory behavior.”
4. “Though the ‘Do not cower’ post could cause a student to interpret that they would face discrimination in Dr. Finkelstein’s courses, the investigators did not find [that] the post constituted harassment, as it was not severe, pervasive, or persistent.”
5. On whether adherents of Zionism are members of a protected class, the report equivocated: “Ms. Storm stated that leadership within Muhlenberg, including herself and . . . legal counsel, made the inference that when Dr. Finkelstein was talking about Zionism, she was talking about Israelis and Jewish people, thereby constituting a protected class.”

Pursuant to the college’s equal opportunity and nondiscrimination policy, Ms. Storm in mid-April convened a “formal panel” consisting of two staff members (one of whom chaired the group) and one

faculty member to “adjudicate” the case based on its review of the D. Stafford report. The panel’s two-page report, issued on May 1, found that Professor Finkelstein had engaged in all four categories of prohibited conduct listed in the college’s equal opportunity and nondiscrimination policy—“bias-related conduct,” “online discrimination and harassment,” “discrimination (based on protected classes),” and “harassment (based on protected classes)” —by “repost[ing] a written statement on Instagram calling for ‘shaming Zionists, not welcoming them into your spaces, making them feel uncomfortable, not normalizing Zionists, calling them racists, and not allowing Zionists to take up space,’” findings that differed markedly from those of the D. Stafford investigation. The report also stated that its conclusions were premised on the assumption that “Zionists” are “a protected class.”

On May 8, the panel issued the recommendation “termination for just cause” based on the “rationale” that, by having transgressed all four categories of discriminatory behavior, Professor Finkelstein’s conduct had “met the standard for online discrimination and harassment involving hateful speech. It was severe and objectively offensive, and it denies or limits the ability to participate in the College’s programs.” In addition, the panel’s letter stated, the anthropology professor’s behavior “grossly violate[d] the principles of the college, as described in Section 4.2 of The Faculty Handbook (Academic Freedom): ‘Accordingly, an academic staff member must always be informed, accurate, discreet, and **respectful toward the opinions** of others, and whenever appropriate, must make every effort to indicate that he/she is not speaking for the College (Bylaws Article V, Section 5C)’” (emphasis in original).¹³

Provost Furge informed Professor Finkelstein on May 30 that, “after consultation with the president,”

13. The panel’s letter does not mention the sentences immediately preceding the quoted sentence, the first two of which closely paraphrase the AAUP-AAC&U 1940 *Statement of Principles on Academic Freedom and Tenure*: “Each member of the academic staff is a citizen, a member of a learned profession, and a member of an educational institution. *When he/she speaks or writes as a citizen, he/she should be free from institutional censorship or discipline*, but his/her special position in the community imposes special obligations of responsibility. These require a learned person and educator to constantly recognize that both the teaching profession and the College may be judged by such faculty or adjunct faculty member’s actions and utterances” (emphasis added).

she concurred with the panel's recommendation and that Professor Finkelstein's appointment was accordingly terminated immediately "pending an appeal and the procedures referenced in Section VII of the College Equal Opportunity Complaint and Resolution Policies for Faculty." The provost's letter makes no mention of the dismissal procedures set out in section 4.3.2 of the faculty handbook. On June 10, Professor Finkelstein filed an appeal with TNG Strategic Risk Management Solutions, the firm retained by the administration to handle the appeal. More than three months later, on September 16, the TNG consultant sent the "concerned parties" a five-page letter advising them that he had dismissed all fourteen of Professor Finkelstein's substantive and procedural objections according to the provisions of the equal opportunity and antidiscrimination policy and had reached the final decision that "the determinations of the College are affirmed and upheld."

Previously, on August 13, Professor Finkelstein had taken steps to contest her dismissal under the procedures governing termination for just cause in the Muhlenberg College faculty handbook, section 4.3.2.1 of which states, "Termination will not be regarded as final until this appeal process has been completed," notwithstanding the fact that the administration had dismissed her on May 30.

The Association's intervention in Professor Finkelstein's case dates to March 8, 2024, when the AAUP's staff wrote President Harring to convey the AAUP's concerns that the action to suspend Professor Finkelstein may have violated her right to freedom of extramural speech, which the letter noted is protected under principles of academic freedom unless it demonstrates a lack of professional fitness. After detailing Association-supported procedures for imposing a suspension, the letter alluded to the troubling fact that the suspension had occurred in the context of escalated political and legislative demands that institutions of higher education restrict what can be expressed on and off campus. It closed by urging President Harring to rescind the summary suspension.

In her April 8 response, President Harring stated without further specification that the Muhlenberg administration "dispute[d] many of the details contained in the [AAUP's] letter," adding "by way of background" that the US Department of Education's Office for Civil Rights had notified the college that it was "investigating a complaint 'that alleges that the College discriminated against students on the basis of national origin (shared Jewish ancestry) by failing to

respond to harassment by [Dr. Finkelstein] in October, November, and December 2023.'" The president went on to assure the AAUP that "the college is committed to and upholds the tenets of academic freedom, tenure, and due process as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*" and to emphasize the college's legal obligation to investigate the alleged discrimination. The staff's April 10 response reiterated the AAUP's concerns and emphasized that any further disciplinary actions taken against Professor Finkelstein that might result from the investigation should conform to AAUP-recommended standards of academic due process.

In September, Professor Finkelstein advised the AAUP that, in the nearly four months that had passed since her services were terminated (with continuation of salary, however), the administration had yet to afford her a faculty dismissal hearing, even though she had formally requested one in August. Association staff wrote to President Harring on September 24 about this departure from the institution's own regulations, especially because it disregarded a crucial element of academic due process—that a dismissal must be *preceded* by an adjudicative hearing before an elected faculty body in which the administration bears the burden of demonstrating adequate cause. The letter referenced Regulation 5 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*, several elements of which, it noted, the faculty handbook incorporated. Citing the 1940 *Statement*, the letter also reiterated the Association's long-standing position that extramural speech cannot serve as a basis for disciplining a faculty member unless it demonstrates a lack of professional fitness, upon which extramural utterances "rarely bear." After noting several other issues of potential interest to the academic community, the letter closed by informing President Harring that the Association's interim executive director had authorized the appointment of an ad hoc committee to conduct an inquiry into Professor Finkelstein's case.

In a September 26 email response, President Harring wrote that several statements in the AAUP letter were not "factually accurate" and did not "accurately reflect the status of the confidential proceedings in this matter which are on-going." Replying on September 27, the staff invited the president to correct any factual errors and solicited further information about the nature of the "confidential proceedings." In her October 2 email response, President Harring provided no corrections but did inform the AAUP's staff

that the Faculty Personnel and Policies Committee had begun its review of Professor Finkelstein's case.

On October 14, the AAUP posted an open call on X (formerly Twitter) inviting Muhlenberg faculty members, staff members, and administrators to contact the undersigned committee of inquiry, whose members had recently been appointed. The AAUP posted a follow-up statement on October 17 after hearing from Muhlenberg faculty members that President Harring had announced that the committee was no longer looking into Professor Finkelstein's dismissal and thus would not be conducting interviews.¹⁴ The committee interviewed twenty-two people between October 30 and November 21 by Zoom teleconference and received statements by email from a handful of additional individuals. Many of them followed up by email, sending documents, copies of pertinent correspondence, or clarifications of previous statements. President Harring, Provost Furge, and Director Storm agreed to meet with the committee as a group, with the understanding that they would entertain questions about college policies and procedures but not about Professor Finkelstein's case. As many of those interviewed indicated a preference not to have their names disclosed, the committee decided to maintain the anonymity of all interviewees except the three administrators and Professor Finkelstein.

IV. Academic Freedom

As the foregoing indicates, this case poses critical issues related to academic freedom.

A. Extramural Speech and Fitness to Teach

Since its founding, the AAUP has regarded extramural speech as protected by academic freedom. The 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* defines "academic freedom" as comprising three elements: "freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action." The 1940 *Statement of Principles on Academic Freedom and Tenure*, jointly formulated by the AAUP and the Association of American Colleges (now the American Association of Colleges and

Universities), contains the following provision on extramural speech: "College and university teachers are citizens, members of a learned profession, and officers of an educational institution. *When they speak or write as citizens, they should be free from institutional censorship or discipline*" (emphasis added). The 1964 *Committee A Statement on Extramural Utterances* (incorporated into the 1940 *Statement* as an Interpretative Comment in 1970) further provides, "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. *Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar*" (emphasis added).

Elaborating on the relationship between competence, professional ethics, and extramural speech, the Association's *Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos* (2009) offers further guidance: "Professors should . . . have the freedom to address the larger community with regard to any matter of social, political, economic, or other interest, without institutional discipline or restraint, save in response to fundamental violations of professional ethics or statements that suggest disciplinary incompetence."

Muhlenberg's own policy on academic freedom is fairly robust. The faculty handbook (section 4.2) reiterates that the college's position on academic freedom is "informed by" and "relies upon" the "AAUP 1940 Statement of Principles on Academic Freedom and Tenure," with 1970 Interpretative Comments, and "On the Relationship of Faculty Governance to Academic Freedom." The commitment to academic freedom is reiterated in the college's equal opportunity and nondiscrimination policy, of which section IV.D, "Free Speech and Academic Freedom," states,

The College endorses the robust, stimulating and thought-provoking exchange of ideas, which requires in-depth and complex educational experiences as well as the space for divergent perspectives. We encourage our community to critically reflect on how asymmetric power dynamics may privilege and marginalize values, beliefs, and norms. Muhlenberg College endorses the principles of academic freedom and freedom of speech. These freedoms may directly challenge individual and group beliefs, values, and/or cultural norms. Grappling with new ideas is

14. In its response to the draft report, the Muhlenberg administration disputes this characterization, stating that, instead of indicating that "the committee was no longer interested in Professor Finkelstein's dismissal," President Harring had informed the faculty only that the committee would not be conducting its interviews on campus.

crucial to the development of complex thinkers and engaged citizens.

This EO [Equal Opportunity and Nondiscrimination] 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 and in Sections 4.2 and 4.3.2.3 of the Faculty Handbook.

We will address Professor Finkelstein's alleged violation of the equal opportunity and nondiscrimination policy in a subsequent section. In this section, we will consider the following question: Did Professor Finkelstein's repost of Mr. Kanazi's anti-Zionist statement demonstrate that she was unfit to teach, in the light of her "entire record as a teacher," as AAUP-supported standards and the college's policies require?

The findings of two AAUP investigative reports—"Academic Freedom and Tenure: The University of California at Los Angeles" (1971) and "Academic Freedom and Tenure: The University of Illinois at Urbana-Champaign" (2015)—are applicable. The first report, concerning the case of Professor Angela Davis, makes the following observations on extramural speech and professional fitness:

To meet the AAUP's standard of unfitness . . . the faculty member's shortcoming must be shown to bear some identified relation to his capacity or willingness to perform the responsibilities, broadly conceived, to his students, to his colleagues, to his discipline, or to the functions of his institution, that pertain to his assignment. . . .

Thus, under [AAUP] principles, institutional sanctions imposed for extramural utterances can be a violation of academic freedom even when the utterances themselves fall short of the standards of the profession; for it is central to that freedom that the faculty member, when speaking as a citizen, "should be free from institutional censorship or discipline" except insofar as his behavior is shown, on the whole record, to be incompatible with fitness for his position.¹⁵

In applying this standard, the investigating committee notes that while the extramural statements for which the UCLA board of regents terminated Professor Davis's services may have lacked "appropriate restraint" and may even have been "extreme," they did not demonstrate Professor Davis's unfitness for her position, especially in light of existing evidence (in the form of student and peer evaluations) of the high quality of her teaching and scholarship.¹⁶

Similarly, the Muhlenberg administration's initial justifications for its actions against Professor Finkelstein did not refer to any review of her effectiveness as a teacher or scholar. Nor did these justifications demonstrate how her extramural speech reflected on her "capacity or willingness to perform" her professional duties.

The second report concerns the case of Professor Steven Salaita. Having accepted a tenured appointment at the University of Illinois at Urbana-Champaign, Professor Salaita had resigned from his previous university and by summer 2014 was in the process of moving to Illinois. In September, however, the UIUC board and administration declined to confirm his appointment because of a series of "impassioned" pro-Palestine statements that Professor Salaita had posted on Twitter (now X). Regarding the relationship between extramural speech and professional fitness, the report states as follows:

Of course, concerns raised by extramural speech about the probable classroom conduct of a faculty member can relate to that faculty member's fitness. The Association's *Statement on Professional Ethics* stipulates that "[p]rofessors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors," adding that professors "avoid any exploitation, harassment, or discriminatory treatment of students." While extramural utterances can raise concerns over classroom conduct, Professor Salaita's tweets can hardly be considered as establishing *clearly by themselves* his unfitness,

15. "Academic Freedom and Tenure: The University of California at Los Angeles," *AAUP Bulletin* 57, no. 3 (Autumn 1971): 398.

16. These extramural statements were made by Professor Davis in public speeches on different California university campuses, and they criticized, among other things, capitalism, the "feudal" nature of university administration, calls to action in the form of mass demonstrations, and the accepted definition of "academic freedom," which protected, according to Professor Davis, eugenicists asserting Black racial inferiority.

especially when actual evidence of his classroom conduct, though available to institutional authorities, was not considered by the chancellor.¹⁷

As in Professor Salaita's case, neither Muhlenberg's provost nor the adjudicating panel adduced any evidence related to Professor Finkelstein's teaching effectiveness—such as course syllabi, course lectures, or student evaluations—in justifying its actions against her.¹⁸ All indications are that Professor Finkelstein was an excellent teacher. In 2021, she had been awarded tenure and promotion to associate professor, presumably based in large part on her classroom performance. That same year she was also offered a prestigious summer grant for her professional development (which eventually resulted in her developing a course on Palestine). And many faculty members who met with this committee attested to her excellence in the classroom. In her interview with the D. Stafford investigators, Director Storm herself referred to Professor Finkelstein as a “revered professor on campus” whom the “students very much look up to.”

Based on the above considerations, this committee of inquiry believes that if the Muhlenberg administration had afforded Professor Finkelstein the due-process rights to which she was entitled under AAUP-supported standards—a *predismissal* hearing before an elected body of faculty peers in which the burden of demonstrating adequate cause rests with the administration—in spring 2024, she would not have been dismissed. Those rights have been afforded her since—in a *postdismissal* hearing. Nevertheless, the FPPC's January 22, 2025, finding that the administration had failed to demonstrate that Professor Finkelstein's extramural speech warranted dismissal lends credence

to our belief. President Harring's ambiguous final determination—“Dr. Finkelstein [had] acted in a manner contrary to College policy that could be viewed as flagrant disregard of the policies and rules of the College”—also tends to reinforce that belief.

B. Surveillance and Suppression

I used a Palestinian author in my course, and I was worried. [Maura's dismissal] changed how I teach, and the students didn't feel safe talking openly about it except in vague terms, and I didn't feel safe pressing them on it. . . . [Maura's dismissal] is affecting all of us. Professors are asking, “Am I allowed to teach X?”
—Tenured professor

People are nervous. They might be teaching the same material, but they are worried about where it will land us. We have a race and power requirement in our gen ed curriculum. And the questions that keep coming up are What happens when a white student claims that they are being discriminated against in discussions of race and white supremacy or when students claim that these topics make them feel uncomfortable or unsafe? The administration doesn't feel it's headed that way, but the faculty feeling is that it is.
—Untenured professor

The dismissal of a tenured professor because of her extramural speech on Israel and Palestine raises legitimate concerns about conditions for academic freedom at Muhlenberg. Discussion of Palestine has often faced censorship, a problem that some refer to as the “Palestine exception.” The committee heard conflicting views on whether the issue of speech about Israel and Palestine was a new one or whether it had always existed. On the one hand, as Professor Finkelstein informed us, her course on Palestine had been “approved without a hitch.” The college had even awarded her a prestigious fellowship to spend a semester in Israel and Palestine to prepare for the course. On the other hand, interviewees cited instances, beginning several years ago, in which the administration had censored pro-Palestinian speakers.

Much faculty commentary focused on the influence of the Hillel Center. A senior faculty member told us that during her first week at Muhlenberg, the colleague giving her a campus tour lowered his voice while driving by the building that houses Hillel and said, “At this school there's a lot of tension between conversations about Israel and Palestine. We try not to bring up that topic here.” The faculty member added,

17. “Academic Freedom and Tenure: The University of Illinois at Urbana–Champaign,” *Academe* 101, no. 3 (July–August 2015): 39.

18. In its response to the draft text of this report, the Muhlenberg administration states, “Professor Finkelstein's fitness to teach was assessed in conjunction with the cumulative impact of her conduct on the college community, and in particular, the impact of the ‘Do Not Cower’ post on students and their educational experience.” The administration provides no evidence for or further elaboration of this claim, nor is any such evidence referenced in the adjudication panel's report or the provost's determination. Professor Finkelstein's syllabi appear to have been included in the D. Stafford report not for the purpose of assessing Professor Finkelstein's teaching (which the external investigators were not qualified to do) but to determine whether she promoted her social media presence or listed her social media handles in them.

“The vibe around campus is that ‘We’re glad you can talk to students about race, but this particular topic is off limits’ such that I have not included Palestine or Islamophobia in my courses. And I’ve had to be so careful with the texts I choose so that my courses are more US centered.”

The student complaint employed in the college’s equal opportunity case against Professor Finkelstein originated in a WhatsApp group of 160 Hillel-associated students and staff. According to the D. Stafford report, a Hillel staff member and Jewish Agency for Israel fellow at Muhlenberg College “stated that part of his role was to ‘keep tabs on what’s happening on social media, and he regularly checked Dr. Finkelstein’s social media’ to see if there [was] an intimidating or anti-Israel post.” With regard to the furor generated over the “do not cower” post (which was only available for twenty-four hours), the D. Stafford report provides the following sequence of events:

- Dean [Allison] Williams [then the vice president for college life and dean of students] stated she saw Dr. Finkelstein’s [January 17] Instagram post, as she follows Dr. Finkelstein.
- Ms. Storm stated Dean Williams sent her a screenshot on the morning of January 18, 2024.
- [The director of Hillel] stated Dean Williams notified him; he then looked at the post.
- [The director of Hillel] stated he shared it with [the Hillel staff member/Jewish Agency for Israel fellow] and encouraged him to have students file a report.
- [The director of Hillel] stated he believed [the Hillel staff member/Jewish Agency for Israel fellow] had shared it with one or two Hillel student leaders, including [the student who filed the complaint against Professor Finkelstein].
- [The Hillel staff member/Jewish Agency for Israel fellow] stated he was unsure when he first learned about this specific post because he checks once or twice a week to see if there is an intimidating or anti-Israel post.
- Provost Furge stated she started getting emails the next day, possibly that same night. The emails were from alumni and friends of the college with screenshots of the “Do not cower” posting.

As Director Storm acknowledged in her interview with the D. Stafford investigators, “There have been some of our students and faculty who have definitely been . . . targeted and followed and tracked to a

degree that is unhealthy, in my opinion, Maura being one of the ones the most [affected]. She has been inundated.”

It seems evident that the surveillance of Professor Finkelstein’s social media accounts gave rise to the subsequent actions taken against her. In short, without the surveillance and whipping up of student sentiment on this issue, it is unlikely that the controversy and resulting crisis over Professor Finkelstein’s social media posts would have occurred and that Professor Finkelstein would have been dismissed from her tenured position.

Given these circumstances, it is not surprising that Professor Finkelstein’s dismissal adversely affected students. One tenured faculty member reported, “Some students say that the campus environment was hell for them last year [if they held anti-Zionist views]. One student told me how she eats in her car because she doesn’t want to be in the dining halls on campus.” Another faculty member told the committee about a student who wrote a thesis on Palestine who did not feel comfortable presenting the paper publicly, fearing potential backlash and even doxxing. To ensure the student’s safety, the faculty members held the thesis presentation privately rather than publicly. But when the faculty members sought counsel from Provost Furge, she reportedly responded, “Our students need to be braver,” leading some to infer that the administration assessed safety concerns unequally based on political considerations. The dismissal of a highly regarded professor because of her views on Zionism must have seemed to justify student fears about such unequal treatment. In the view of this committee, concerns about antisemitism should never be trivialized or dismissed out of hand, but neither should similar concerns raised by those who support Palestinian liberation. We note further that the attacks on Professor Finkelstein, who is Jewish, for her criticism of Israel could also be construed as antisemitic because such attacks suggest that it is not acceptable to be Jewish *and* pro-Palestine or anti-Zionist, thereby justifying (and in some cases encouraging) vitriol and hostility directed at Jewish persons who hold these views.

But suppression regarding support for Palestine and criticism of Israel seems to have affected faculty members even more banefully than it did students. The lingering reverberations of fear and anxiety were evident in the committee’s interviews. “I can’t do the things I do in my classroom if I have to worry about someone coming out of the woodwork [to attack my teaching] who I’ve never even met!” said one tenured

professor. An untenured faculty member reported, “I scrubbed a week of Israel/Palestine from my syllabus. I was worried that it would get me fired. . . . It has definitely shaped my teaching and materials. . . . [A tenured colleague] told me that if he were teaching his class at another institution, he would include settler colonialism in a global context, but he doesn’t here.”

A tenured faculty member spoke to the belief expressed by many of the interviewees: Each discipline experiences a different degree of perceived threat to their academic freedom. He said to the committee, “There are people who deal with these intense social issues in the classroom and those who don’t. For a lot of people [in disciplines outside the humanities and social sciences] such topics may never come up.”

This perception was, however, challenged in the committee’s interview with a group of four faculty members, three of whom taught in natural science or business disciplines, who met with us specifically to communicate that they did *not* have concerns about academic freedom or governance at Muhlenberg. One preemptively objected to the view that faculty members in fields other than the humanities and social sciences do not experience the same level of threat or have the same understanding of academic freedom, stating, “I resist the characterization that I don’t understand academic freedom [in the same way as these colleagues do].” Others in this group who had been actively engaged in academic governance at Muhlenberg for many years emphasized that the college had a “strong” culture of shared governance compared to other institutions where they had served.

A November 2023 incident may also be indicative about the climate for academic freedom at Muhlenberg. At the time an unmoderated email group existed that members of the faculty, staff, and administration were free to use (Professor Finkelstein had posted her October 10, 2023, response to President Haring to this group). This committee was told that, in response to an email from a senior administrator equating the doxing of Muslim and Arab students with the destruction of pro-Israel posters, a staff member had voiced her disagreement, ending her message with either “From the river to the sea, Palestine will be free” or “Free Palestine.” The administration deleted it within a few minutes and, shortly afterward, shut down the email group permanently. Since the email had been deleted, the committee was unable to verify the text, but several faculty members recounted this incident. That Muhlenberg College formerly operated an unmoderated email group indicates a relatively healthy climate for

academic freedom in the recent past, although faculty members teaching certain disciplines reported having always been aware of the potential for scrutiny when discussing Israel and Palestine. However, its unilateral elimination seems to indicate that the climate for academic freedom on campus has since deteriorated.

C. Budget Cuts and Civility

A lot of people were laid off last year. So people are really concerned and there is administrative pressure to be grateful for our jobs in these times.

—Tenured professor

An unexpected theme that emerged in the faculty interviews was that the Muhlenberg faculty (not unlike faculties at other colleges dealing with declining enrollment) had been for several years coping with the effects of budget reductions. One tenured faculty member reported, “Our faculty was over 200 a few years ago, last year it was 180, we are coming down to 170s, and, in order to be financially viable, we have to be in the 160s, I believe. . . . Staff have been reduced by about 15 percent.” Another reported, “We are a donor- and tuition-driven institution, so the mentality is ‘keep your head down and don’t look up.’ . . . This is especially true now [when the faculty is shrinking].” The apprehension of the untenured faculty members we interviewed was heightened by the relative insecurity of their appointments. One untenured faculty member admitted, “My favor with the provost has a direct line to my continued employment.” One faculty member had compiled a list of faculty and staff members who had recently left the college because of resignations and terminations along with the reasons they gave for leaving. Among them were “inhospitable climate,” “lack of support for diversity (in all its forms),” and “brutal” reductions in staff resulting in “the loss of colleagues/friends across campus.”

The committee of inquiry also heard that financial difficulties have engendered expectations that faculty members maintain “civility,” “put on a good face,” and “not rock the boat.” Professor Finkelstein was evidently perceived to have been guilty of violating the last expectation. Her faculty supporters referred to her as “brave” and “outspoken,” as “someone who always fought for the vulnerable,” but other faculty members (particularly, the group that had no serious concerns about academic freedom or governance) characterized her as a “troublemaker” and her communications as “strident” and “belligerent.” One professor stated, “If she wanted to be such a fierce

advocate for her cause, she need not have stayed on the job. But if she was going to stay on the job, she should have behaved like a Muhlenberg worker should among our community. Specifically, she should have known not to use every element of the academic and scholarly freedoms that were available to her and to have dealt with the irony of limited freedom. The reputation of the college, earned by thousands of people over multiple decades, was not hers to put at risk.”

That some faculty members held this negative opinion of Professor Finkelstein (partially explaining, perhaps, the initial inaction and silence of the faculty following her dismissal) reflects a behavioral expectation that appears to have been embraced by many, especially given the college’s recent financial struggles. Indicative of a “toe-the-line” mentality was the testimony of the members of the sociology and anthropology department, who reported that they too were viewed as “troublemakers,” a perception, they said, that was “undermining [their] ability to function on campus.” As one department member put it, “We are portrayed as whining. *We* are hurting the college.” Budget cuts, and the uncertainty they have created, have promoted divisiveness, fear, and silence among the faculty, in which the most outspoken members can become targets. As one individual from a different department admitted, “We were all pointing fingers at each other instead of pointing them up [where the responsibility lies].”

Not surprisingly, an alleged absence of civility, conflated with the issue of safety and security for students, was raised in Professor Salaita’s case as well. But, as the Salaita report concluded, “Historians have shown that over the centuries (whether used by aristocrats to distinguish themselves from the bourgeoisie, by the bourgeoisie to elevate themselves above the lower classes, or by Christians to establish their superiority to Jews and Muslims) the notion of civility consistently operates to constitute relations of power. Moreover, it is always the powerful who determine its meaning—a meaning that serves to delegitimize the words and actions of those to whom it is applied.” The expectation of civility imposed on Professor Finkelstein (and on the members of her department, as our interviews revealed) served to delegitimize her teaching and scholarship in the eyes of some. One department member went so far as to say that it served to delegitimize the department, especially during a time when sociology and similar disciplines are under attack from the far right.

The climate for academic freedom at Muhlenberg College thus appears to have degraded under financial

stress and the resultant narrowing of the boundaries of acceptable dissent. Since the 2024 publication of *The Intercept* article about Professor Finkelstein’s case, however, the climate has shown signs of improvement, with the faculty beginning to unite and, instead of pointing fingers at each other, beginning to “point up” and demand answers.¹⁹ Faculty members have established an AAUP chapter, which includes both supporters and critics of Professor Finkelstein coming together over their mutual concerns about academic freedom and shared governance.

V. AAUP Dismissal Standards, Muhlenberg’s Equal Employment Opportunity Policies and Procedures, and the Faculty Handbook

The report on the Angela Davis case emphasized the importance of procedural standards when an institution wades into the murky waters of extramural speech:

At some stage in a contested argument over academic responsibility and fitness to teach, appeal must be made to someone’s judgment in applying what are necessarily somewhat imprecise standards for the limits of propriety of extramural controversy. The judgment to be made is how far the condemned polemics fall below a professionally tolerable norm and about the gravity, the frequency, and other circumstances of the incidents along with other evidence bearing on the speaker’s overall academic responsibility. . . .

It is entirely possible, even likely, that the balance might be struck differently on the same evidence by leaders of the academic community and by members of a governing board, especially where political and other public controversy is involved. . . . In the light of these considerations, the wisdom of the AAUP procedural standards—which require careful exchange of views between faculty committees, administrations, and governing boards in disciplinary actions of the present kind—is apparent.

19. Natasha Lennard, “Meet the First Tenured Professor to Be Fired for Pro-Palestine Speech,” *The Intercept*, September 26, 2024, <https://theintercept.com/2024/09/26/tenured-professor-fired-palestine-israel-zionism/>. Faculty members informed the committee that up until the release of *The Intercept* article, many on campus believed that Professor Finkelstein “must have done something wrong” and that the administration “had something egregious” on her. Because the article revealed the Instagram repost to be the ground for her dismissal, her case suddenly became a topic of campus conversation.

AAUP-supported dismissal standards, as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*, the *Statement on Procedural Standards in Faculty Dismissal Proceedings*, and Regulations 5 and 6 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*, stipulate that a faculty member whose dismissal is sought has the right to a pretermination hearing before an elected faculty body. Regulation 5 sets forth AAUP-recommended procedural standards for dismissal, the most essential of which are the following:

- a statement of specific charges,
- a formal hearing on the charges conducted by an elected faculty body,
- the right to be assisted by legal counsel and accompanied by an adviser,
- the right to have evidence introduced at the hearing and placed in the record,
- an opportunity to cross-examine witnesses,
- a verbatim record of the hearing provided to the parties, and, crucially,
- the burden of proof on the administration for demonstrating adequate cause “by clear and convincing evidence in the record considered as a whole.”

Regulation 6 affords the faculty member the right to appeal an adverse decision to the governing board.

It was only in September 2024, more than three months after Professor Finkelstein had received final notice of “termination for just cause,” that it appeared that the Muhlenberg administration might adhere to any of these procedural standards. Her dismissal had become effective at the end of May without a hearing, without the adjudication of her case by elected faculty peers, without the opportunity to confront and cross-examine witnesses, and without demonstration of just cause by “clear and convincing evidence in the record considered as a whole.”

Instead, the administration dismissed Professor Finkelstein using procedures set out in the equal opportunity policy document for faculty members. As permitted under these procedures, Director Storm retained D. Stafford & Associates to investigate the allegations made against Professor Finkelstein. As noted previously, a “formal panel” consisting of two staff members and one faculty member, all of whom were appointed by Director Storm (in consultation with the Provost Furge, we were informed), then met to adjudicate the case based on the findings in D. Stafford’s final

report. Although the panel’s conclusions did not correspond with those of the D. Stafford investigators, the panel determined by a preponderance of the evidence that Professor Finkelstein’s conduct had occurred as alleged and had violated the college’s equal opportunity and nondiscrimination policy. A few days later, the panel recommended the sanction of “termination for just cause.” After consulting with President Haring, the provost notified Professor Finkelstein of her concurrence in the recommendation, a “final determination” effective May 30, “pending an appeal.”

That appeal, according to the provost’s letter, was to be conducted according to “the procedures referenced in Section VII of the College Equal Opportunity Complaint and Resolution Policies for Faculty,” which, the letter noted, “allows for an appeal for limited grounds as described in Section VII.” Under that section, appeals can be filed only if they involve the following claims: (a) “error of judgment,” (b) “bias affecting judgment,” (c) “procedural error,” (d) “new evidence,” or (e) “sanction inappropriate [*sic*].” The appeal is heard by an internal or external third party selected by the director of the equal opportunity and nondiscrimination office rather than an elected faculty body. The burden of proof rests with the sanctioned party instead of the administration. In this case, Director Storm submitted Professor Finkelstein’s appeal to a partner in TNG Strategic Risk Management Solutions (discussed below in detail) who in his capacity as “appeals officer” consulted with President Haring before issuing his “final determination.”

The TNG consultant’s response to Professor Finkelstein’s appeal can best be characterized as not only lacking in substantive analysis but dismissive and, at times, glib. It does not address the merits of any of Professor Finkelstein’s arguments. For instance, as evidence of “bias affecting judgment,” Professor Finkelstein had challenged the composition of the panel (consisting of two staff members, one of whom supervised the other, and only one faculty member). In reply, the TNG consultant wrote, “In the response to [Professor Finkelstein’s] appeal by the Panel, the Panel members took offense to this notion, pointing to the fact that they are well-trained and on equal footing. [Accordingly], this appellate ground is dismissed, and the Panel and Provost’s findings/determination under the EO policy is upheld.” It is unclear to this committee what bearing the panel members’ feelings could possibly have on Professor Finkelstein’s claim of procedural bias and why the consultant would treat those feelings as evidence of a lack of such bias.

Responding to Professor Finkelstein's contention that the sanction of dismissal was disproportionate to the alleged misconduct, the consultant observed, "The range of sanctions is stated clearly in the EO policy and included termination as a possibility. While it is the most severe sanction, I cannot find that the Panel and Provost w[ere] unreasonable in [their] determination or otherwise stepped outside the range provided. As such, this appellate ground is dismissed, and the Panel and Provost's findings/determination under the EO policy [are] upheld." This conclusory response implies that a sanction cannot be disproportionate or inappropriate so long as it lies within the "range provided" in the policies. A similar lack of engagement regarding the substance of Professor Finkelstein's appeal is evident throughout the TNG report.

Sections 3.10.1, "Suspension or Termination for Cause"; 4.3.1.2, "Formal Problem Resolution Procedures"; and 4.3.2.1, "Special Provisions in Termination for Just Cause," of the college's faculty handbook include provisions that comport with Association-supported dismissal standards. As a result, faculty members subject to dismissal are entitled to a faculty hearing in which the burden of proof for demonstrating adequate cause rests with the administration. The college's dismissal policy also affords affected faculty members the right to call and cross-examine witnesses, to be accompanied in the hearing by a faculty or staff representative, and to be furnished with a verbatim record of the proceedings. The policy, however, departs from AAUP-recommended standards in critical ways—most significantly, by granting the hearing committee the discretion to decline to hear a dismissal case: "If the FPPC determines that the faculty member's evidence does not warrant a formal review, the proceedings will be terminated, and the faculty member not permitted to appeal that decision" (section 4.3.2.1). Additional departures include a prohibition on the faculty member's being advised by an attorney during the hearing, even though the FPPC has that right; no opportunity to appeal an adverse decision to the governing board; and a "preponderance of the evidence" rather than the AAUP-recommended "clear and convincing evidence" standard of proof.

Section 3.10.1 lists four potential grounds for a dismissal "for cause," but the only one applied to Professor Finkelstein's case, and only after Professor Finkelstein filed her appeal with the FPPC in August 2024, was "Such flagrant disregard of the policies or rules of the College or of the customs of scholarly communities as to render the individual unfit to continue as a member of

the academic staff." (The others—criminal conviction, refusal to perform academic duties, and incapacity—were clearly inapplicable.) Regrettably, when acting to dismiss her in the spring, neither Director Storm nor Provost Furge nor President Harring had informed Professor Finkelstein of her right to a faculty hearing under the college's dismissal-for-cause policy, and she was not able to avail herself of that right until October 15, when the Faculty Personnel and Policies Committee decided to proceed with a formal review of the case. That review concluded on January 8, 2025, and the FPPC submitted its findings and recommendation to Professor Finkelstein and President Harring on January 22—almost exactly one year after the professor was placed on leave and barred from campus. In its final report, the FPPC states that it "voted unanimously" in favor of the following finding and recommendation: "[T]he administration did not meet the burden of proof by a preponderance of the evidence that the actions of Dr. Finkelstein met the conditions for termination for cause. Therefore, the FPPC recommends reconsideration of the termination." President Harring had until February 21 to deliver her written determination, which, according to the faculty handbook (4.3.1.2.q) was to "be regarded as final." As mentioned earlier, the president did not issue that determination until March 31. Crucially, instead of finding that Professor Finkelstein's conduct had demonstrated "*such* flagrant disregard of the policies or rules of the College . . . as to render the individual unfit to continue as a member of the academic staff" (emphasis added), the president found that "Dr. Finkelstein [had] acted in a manner contrary to College policy that *could be viewed* as flagrant disregard of the policies and rules of the College" (emphasis added).²⁰

Prior to the FPPC's taking up the case, however, the administration had controlled the entire process leading to Professor Finkelstein's dismissal, with no

20. The president's 3,300-word response, titled "President's Determination of Dr. Maura Finkelstein's Appeal of Termination for Cause" and marked "Confidential: Not for Distribution," contains a chronology of the administration's handling of Professor Finkelstein's case; a summary of the FPPC's charge, findings, and recommendation; and sections disputing the FPPC's statements and conclusions regarding "flagrant disregard" and "totality of circumstances." A "conclusion" following these last two sections ends with the following statement: "I find that the totality of the circumstances related to Dr. Finkelstein's conduct when considered under Title VI, as incorporated into the College's EO policies, establish policy violations." Next is a section on the "college's legal responsibility." The last section, "determination," states the finding quoted here.

involvement by any faculty governance body. As the foregoing has indicated, that initial process bore no resemblance to what AAUP-recommended procedural standards require for dismissing a faculty member.²¹

VI. Climate for Academic Governance: Fear, Silence, and Lack of Transparency

I'm coming from a place of deep and ongoing frustration. There is opacity, manipulations of our policies, and coercion of faculty. . . . I'm concerned that the institution's actions were precipitated by financially influential donors and alums and that our administration is manipulating our policies and procedures to remove faculty members they don't want.

—Tenured professor

There is a culture of fear and silence.

—Untenured professor

As discussed in a preceding section, shrinking budgets and faculty and staff cuts have engendered fear and insecurity in the faculty. Making matters worse is what some faculty members perceive as a slow decline in shared governance and administrative transparency for the last decade or so.²² Faculty members shared many examples with this committee, most notably, the board of trustee's reappointment of President Harring during this inquiry, a decision announced on October 31, 2024, the first day of our faculty interviews. During subsequent interviews, we learned that the announcement took many faculty members by surprise, especially since the governing board had not given the faculty any opportunity to evaluate the president's performance. One tenured faculty member, heavily involved in governance for many years, told the committee that his "perception" was that the board was behind Professor Finkelstein's dismissal. "I see no other reason why the president was renewed for another four years in the middle of two ongoing public investigations [the AAUP inquiry and the OCR investigation]."

Under the AAUP's *Statement on Government of*

Colleges and Universities, the faculty has "primary responsibility" for "faculty status and related matters," which include decisions to impose sanctions on a faculty member, especially a severe sanction like dismissal. Relative to that basic standard, the selection and composition of the "adjudication panel" raise serious concerns. Only one panelist was a faculty member, and Director Storm, not the faculty, selected all three from a preexisting pool of candidates. That two panelists were staff members contravenes a fundamental AAUP-supported principle—the necessity of peer review in faculty personnel matters. Although the college's equal opportunity policy requires panel members to possess an "understanding of [the] particular issues" that a case presents, when this committee asked Provost Furge and Director Storm whether they considered disciplinary diversity and expertise in appointing members for the pool from which panelists were drawn, the provost replied, "Currently our EO policy does not require disciplinary consideration." When asked how she and the director determined whether panel members were knowledgeable about academic freedom—clearly a critical issue—President Harring stated, "All academics have a certain understanding of academic freedom."²³ After noting that prospective panelists "get academic freedom training as part of the certification process through ATIXA [the Association of Title IX Administrators]," Director Storm added, "We also don't want to get too specific with expertise, because that itself creates bias."

When this committee asked Provost Furge about the process of appointing faculty members to the panel, she stated that soliciting interest in and selecting the pool was not a "regularized process." In an email message to the committee, a faculty member provided this perspective:

Regarding the members of the supposedly trained faculty and staff "pools" of people who are appointed to "panels" to adjudicate alleged

21. Our review of the FPCC's report, however, leads us to conclude that that committee diligently followed the policies and procedures in the faculty handbook, a commendable exercise of governance responsibilities that constitutes a silver lining in an otherwise regrettable course of events.

22. As mentioned previously, a small group of faculty members who met with this committee reported not having concerns about governance or academic freedom.

23. Section V.C.iv of *Faculty Equal Opportunity Complaint and Resolution Procedures*, the policy document utilized in Professor Finkelstein's case, states that, when convening a panel, "the Director of Equity & Title IX Coordinator shall choose panel members considering, but not limited to, potential conflict of interest, potential bias or perception of bias, availability, and understanding of particular issue(s) presented in a particular case." A footnote for this sentence reads, "For example, if a case involves particular questions of academic freedom."

violations of the EO policy—the short answer is that no one knows who these people are. . . . Even though they are supposedly representing the faculty, we have no role in selecting who our representatives are in this “pool,” and I don’t even think the people who are in the “pools” know who each other are until and unless they are empaneled. . . . The faculty have been repeatedly told that the Office of [Equity and Title IX] regularly issues public calls for faculty to volunteer to be trained in and serve in this pool—but as far as I am aware, this in fact has never happened. As far as I know, individual faculty supposedly get reached out to directly by the provost. . . . [We] have no way of even knowing or verifying if in fact there are currently (or were when Maura’s case was heard) four “trained” faculty and staff members in the pools, other than to take the administration’s word.²⁴ At our most recent faculty meeting, [a faculty member] asked the faculty present to raise their hands if they were one of the trained faculty “pool” members, and not a single person raised their hand. Of course, maybe they just didn’t want to raise their hands, or maybe they had gone to the bathroom or weren’t at that particular faculty meeting for some reason. But I think it illustrates just how few people are serving in these roles—basically just those handpicked by the administration.

It is no wonder that faculty members complained that the selection processes for the pool and panel were a “black hole.”

Turning from its implementation to the policy itself, we encounter additional issues of concern. According to faculty sources, the administration had claimed that the equal opportunity and

nondiscrimination policy had been written by “experts,” leading faculty members to infer that the administration deemed the subject to lie outside the faculty’s expertise and purview. The “experts” in question were consultants from the Association of Title IX Administrators (ATIXA), which offers its services to paying institutional members and has been promoting its One Policy, One Procedure (1P1P) model for “more than a decade.”²⁵ Its selling points, according to its website, include “value and risk-management.” The website adds, “1P1P became a unifying model, in which all forms of protected class discrimination and harassment were resolved in the same way, regardless of whether the participants were faculty, students, or staff. We advocated for 1P1P not just on the value of consistency, but on the benefits of being streamlined and efficient and of only having to train one team on one set of policies and procedures.” The site further lists “defensible in litigation” as another benefit of 1P1P, asserting, “ATIXA’s model ensures high-quality, defensible outcomes. Home-grown solutions are less likely to be as defensible. They tend to be more variable, less consistent with common practices, *and more reflective of the quirks of campus culture, institutional history, and norms*. You don’t want to be somewhat trapped in doing things the way you have always done, which can be fatal in court” (emphasis added).²⁶

Outsourcing these policies to a third party that deliberately ignores “institutional history and norms” and employs the same procedures for faculty, staff, and students is fatally problematic. The framework of

24. None of the faculty members interviewed by the committee recalled having received an invitation to become trained investigators prior to Professor Finkelstein’s case becoming public in fall 2024, although, after reviewing the draft text of this report, one faculty member recalled having received such communications. When this committee asked Provost Furge and Director Storm to share their last solicitation for faculty volunteers for the pool prior to fall 2024, the provost forwarded a June 2022 “Provost Newsletter” featuring announcements and updates. The fifth of six items in the newsletter invited faculty members to serve on a “Hearing Panel for Title IX.” When we asked whether she had extended any such invitations in 2023, the provost replied, “At this point I have shared the items I have to share with you on these questions.”

25. The ATIXA website states, “At ATIXA, we see compliance as a floor. We encourage our members to reach for the ceiling, because excellent programs are built from commitment, not compliance. ATIXA will put you in the best possible position not just to meet, but to exceed, the compliance mandates of the courts and OCR” (<https://www.atixa.org/member-services/who-atixa-serves/>). TNG boasts of having worked with thousands of institutions: <https://www.tngconsulting.com/who-we-serve/higher-education/>. CEO Brett Sokolow, on his LinkedIn page, says that the company has “authored policies used by more than 1,000 colleges and schools, written or revised hundreds of campus codes of conduct, personally trained administrators, and led investigations for thousands of college campuses and schools”: <https://www.linkedin.com/in/brettsokolow/>. See also Marcela Rodrigues, “Prominent Higher-Ed Consultant Committed Financial Fraud, Lawsuit Says,” *The Chronicle of Higher Education*, October 25, 2022, <https://www.chronicle.com/article/prominent-higher-ed-consultant-committed-financial-fraud-lawsuit-says>.

26. <https://www.atixa.org/blog/are-atixa-model-policies-and-procedures-considered-industry-standards/>.

One Policy, One Procedure by definition ignores the unique responsibilities that faculty members perform, distinct from those of students and staff members, responsibilities that entail corresponding rights.²⁷ Among those rights are academic freedom, academic due process, and faculty participation in institutional decision-making, which ATIXA's poorly conceived policies fail to take into account. To cite just one such deficiency, after the TNG consultant rejected her appeal, Professor Finkelstein was left with no means under the ATIXA-recommended policy by which to challenge the decision.

The consultant was Mr. W. Scott Lewis, a managing partner at TNG, a consulting firm offering "risk management" and "compliance" services. Interestingly, ATIXA lists TNG as its "parent company." Mr. Lewis is also a cofounder and advisory board member of ATIXA.

These circumstances raise potential conflict of interest concerns for this committee. That is, ATIXA assures its clients that adopting its policies will help resolve cases and defend against litigation. Risk-management company TNG is the parent company of ATIXA, and the two share board members. Muhlenberg is a client of both ATIXA and TNG, and Professor Finkelstein's appeal was denied by a TNG appeal officer who is both an ATIXA board member and a cofounder and a partner at TNG. In the view of this committee, that an ATIXA board member was tasked with reviewing and potentially negating an outcome resulting from implementation of policies and procedures recommended by ATIXA presents a thorny situation. Is it reasonable to expect that someone with material interests in both ATIXA and TNG would be impartial? It should perhaps come as no surprise that Professor Finkelstein's appeal received a cursory response.²⁸

The committee learned of other breakdowns in shared governance at Muhlenberg. In January, the administration excluded the sociology and anthropology

faculty from various decisions affecting their department after Professor Finkelstein's suspension. In May, the administration failed to inform the department chair of Professor Finkelstein's dismissal. And in summer 2024, the provost neglected to inform the department regarding the status of the courses normally taught by Professor Finkelstein and offered the visiting professor an extension of his contract without the department's knowledge; while the administration might claim that decisions needed to be made quickly, under principles of academic governance, the provost should have consulted with the department before making that offer.

VII. Title VI and EO Policies: Power, Safety, and Surveillance

The far right and their spokespeople are now partnering with Zionists. If talking about race makes white students feel unsafe, then talking about genocide [by Israel] makes Jewish students feel unsafe. . . . There is a conflation of what makes students uncomfortable with what makes them unsafe. They are weaponizing "unsafety." It is a way to protect and preserve power so certain topics never get discussed.

—Professor Maura Finkelstein

The following section addresses the content of Professor Finkelstein's January 17, 2024, Instagram post and the adjudication panel's finding that it violated the college's equal opportunity and nondiscrimination policies.

A. Zionism and Protected-Class Status

The adjudication panel based its May 8, 2024, recommendation to dismiss Professor Finkelstein "for just cause" on its findings that she had violated the college's equal opportunity and nondiscrimination policy by engaging in (1) "bias-related conduct," (2) "online discrimination and harassment," (3) "discrimination (based on protected classes)," and (4) "harassment (based on protected classes)," defined as follows by the policy document then in effect:²⁹

1. Bias-related conduct includes a broad range of conduct that can be verbal, non-verbal, written, or physical . . . that harms, discriminates, or harasses anyone in our community based on a Protected Class.

27. It is notable that none of the trainings offered on ATIXA's website appear to deal with academic freedom, though free speech is mentioned in a few descriptions. Academic freedom, then, may be one of those "institutional norms" or "quirks of campus culture."

28. It is also worth noting that, under the equal opportunity policy for faculty, "in case of suspension or termination of a tenured faculty member, the appeal officer shall consult with the President before issuing the final determination." Clearly, there is room here for an appeals officer to be influenced by the "client" in reaching a final judgment.

29. The college revised its equal opportunity and nondiscrimination policy in August 2024 and in January 2025.

2. Online discrimination and harassment . . . shall be interpreted broadly to include online and cyber manifestations of any of the conduct prohibited by this Policy. . . . Examples of prohibited online conduct include . . . online harassment involving hateful speech or threats.
3. Discrimination (based on Protected Classes) . . . is conduct based on the Protected Classes of . . . national or ethnic origin, race, religion, . . . that (i) Excludes an individual from an educational or employment opportunity or program at the College, (ii) Denies an individual the benefits of an educational or employment opportunity or program at the College, or (iii) Adversely affects a term or condition of an individual's employment, education, living environment, or participation at the College.
4. Harassment (based on Protected Classes) . . . is conduct based on the Protected Classes of . . . ancestry, . . . national or ethnic origin, race, [and] religion . . . that is (i) Severe, persistent, or pervasive; (ii) Objectively offensive; and (iii) 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.

Regarding whether Zionists are a protected class, the panel made the following crucial determination, quoting a conclusion in the D. Stafford report:

Protected Classes Status – The college leadership, in consultation with legal counsel, made the inference that under the circumstances of this case “when Dr. Finkelstein was talking about Zionism, she was talking about Israelis and Jewish people.”

The entire passage from the D. Stafford report reads, “The investigators recognize that there are varied opinions about what constitutes a Zionist; however, Muhlenberg College has the responsibility, using the U.S. Department of Education's guidance and considering all case circumstances, to determine if a student or employee who identifies as Zionist is part of a protected class based on the above description. *Ms. Storm stated that leadership within Muhlenberg, including herself and in consultation with legal counsel, made the inference that when Dr. Finkelstein was talking about Zionism, she was talking about Israelis and Jewish people, thereby constituting a protected class*” (emphasis added).

Since the action against Professor Finkelstein was based on the charge that she discriminated against a protected class by reposting Mr. Kanazi's anti-Zionist statement, this committee of inquiry asked the Muhlenberg administrators to confirm that they indeed took the position that “Zionists” are the same as “Israelis and Jewish people” and therefore constitute “a protected class.” Absent that premise, the case against Professor Finkelstein rests on nothing and violates the provision in the equal opportunity and nondiscrimination policy specifying that conduct that “does not otherwise rise to the level of discrimination or harassment under this EO Policy may be addressed through . . . other relevant College policies, or *through remedial actions, education, and/or effective conflict resolution mechanisms*” (emphasis added). The committee of inquiry accordingly pressed President Harring, Provost Furge, and Director Storm on the issue of Zionists as a protected class. The three administrative officers did not, however, respond to our questions, either during the interview or in response to several follow-up emails.

According to Director Storm's February 16, 2024, interview with the D. Stafford investigators, Professor Finkelstein was surprised to learn that college officials considered Zionists to be a protected class. Ms. Storm told the interviewers that Professor Finkelstein “did not see Zionism as a protected class” and had instead insisted that it “was a political stance.” Director Storm added, “And in fact, she had asked me very directly, ‘Are we stating that Zionism is a protected class?’” According to the transcript of the interview, Ms. Storm had responded, “Yes, because the formation of the State of Israel was formed on Zionism, so we see that as a national origin.” When the D. Stafford interviewers asked whether the notion of Zionism as a protected class was official college policy, Director Storm replied, “It's not in policy. Obviously, we just have, in our policy, the protected classes, national origin being one of those. So, when we looked at her post, to all of us who were on that call, and there was about four or five of us that were looking at it and analyzing it, including our legal counsel, we all made the inference that when she was talking about Zionism, she was talking about Israelis and Jewish people.” Director Storm told this committee that both the student complainant and the Hillel director believed Zionism to be part of their national identity.

At this juncture, the following conclusions seem warranted. (1) There is no college policy on Zionism.

(2) The administration reached the determination that Zionism was a protected class based on its own discretion (suggesting that the administration had arrogated to itself the power to define protected classes not named in the college's equal opportunity policy). (3) After determining that Zionism was a protected class, the administration was obliged to conclude that "talking about Zionism" was the same as "talking about Israelis and Jewish people." (4) In so concluding, it negated the identity and beliefs of those Jewish faculty members (such as Professor Finkelstein) who do not identify as Zionists. (5) By equating being Zionist with being Jewish the administration conflated being anti-Zionist with being antisemitic.³⁰ (6) Such an overly broad understanding of antisemitism removes the protections of academic freedom from criticisms of Israel and Zionism.³¹

It should not be surprising, then, that, in its January 22, 2025, report, the FPPC identifies the administration's late and equivocal definition of Zionism as a protected class as the fatal flaw in its case for dismissing Professor Finkelstein: "The evidence suggests that there was a lack of clarity around the policies that govern the use of personal social media accounts and determinations of protected class status that, together, preclude reaching the conclusion that Dr. Finkelstein's behavior was an act of 'flagrant disregard.'"³² Imposing the most severe sanction on Professor Finkelstein for having violated the equal opportunity policy when college officials themselves had failed to provide a timely and definitive position on whether those supposedly discriminated against were members of a protected class and are even now unwilling or incapable of providing a definitive answer

on the issue seems unwarranted and unfair, to say the least. A less charitable interpretation of the situation is that Professor Finkelstein was an easy target and that, after the long campaign against her (acknowledged by Director Storm in her interview with the D. Stafford investigators), the administration was eager to find a way to remove the college from the limelight by riding itself of the source of the negative publicity.

B. Professor Finkelstein's Social Media Posts

In addition to the claim that Zionists are a protected class, the committee also considered whether Professor Finkelstein's social media posts met the threshold for harassment set out in the college's equal opportunity and nondiscrimination policy: conduct that is "severe, persistent, or pervasive," "objectively offensive," and "unreasonably interferes with, denies, or limits" a student's "ability to participate in or benefit from the College's educational . . . programs." As noted earlier, on May 8, 2024, the adjudication panel justified its recommendation of "termination for just cause" based on this very conclusion regarding Professor Finkelstein's January 17 repost of Mr. Kanazi's anti-Zionist statement.

1. The Remi Kanazi Repost

This report has shown that the Muhlenberg administration adduced no evidence that Professor Finkelstein's "do not cower" repost demonstrated professional unfitness. Regarding the claim that it constituted "online discrimination and harassment," the committee of inquiry has the following objections.

First, Professor Finkelstein's Instagram post was a repost of Mr. Kanazi's statement—not her own. A Muhlenberg faculty member interviewed by this committee stated, "As a repost it was presenting a Palestinian perspective. Is the requirement that that perspective has to be treated as illegitimate and cannot be voiced?" The faculty member continued, "Words can mean different things to different people, and the perspective that they can mean only one thing is concerning. Are we saying only one understanding of that post counts as legitimate?"

Second, as Professor Finkelstein informed the committee and the external investigators, she reposted the statement without comment, and, third, she reposted it as an Instagram story. An Instagram story is temporary, disappearing in twenty-four hours after first being visible only to those who sought out the owner's account and took the extra step to click on "Stories" in the account's profile picture. Someone wishing to

30. Equating Zionism with "Israelis and Jewish people" necessarily excludes Zionists who profess Christianity, who outnumber Jewish Zionists. See Michael Lipka, "More White Evangelicals Than American Jews Say God Gave Israel to the Jewish People," Pew Research Center, October 3, 2013, <https://www.pewresearch.org/short-reads/2013/10/03/more-white-evangelicals-than-american-jews-say-god-gave-israel-to-the-jewish-people/>.

31. See "Legislative Threats to Academic Freedom: Redefinitions of Antisemitism and Racism," *Academe* 108, no. 2 (Summer 2022): 70–73.

32. As previously noted, "Flagrant disregard of the policies or rules of the College, or of the established customs of scholarly communities, as to render the individual unfit to continue as a member of the academic staff" (section 3.10.1 of the faculty handbook) was the sole ground for dismissal in Professor Finkelstein's case when the FPPC considered it.

disseminate it would have had to have taken a screenshot of it during the period of visibility and then have shared it widely. Is it reasonable to construe Professor Finkelstein's repost as harassment—conduct that is “severe, persistent, or pervasive,” “objectively offensive,” and “unreasonably” preventing students from participating in college programs—if that conduct took place on a non-college-affiliated social media account, did not necessarily express the author's own views, did not indicate agreement or disagreement with the view shared, and had to be sought out, preserved, and disseminated by others for the post to become known to students? The D. Stafford investigators concluded that even though “students who identified as Zionist” and became “aware” of the post might “reasonably feel that Dr. Finkelstein” might discriminate against them, the post did not “amount to severe, persistent, or pervasive” conduct.³³

Given the findings of the external investigation and its equivocal definition of Zionism as a protected class, the Muhlenberg administration would have been wise to proceed with care and deliberation. Both the equal opportunity and faculty handbook policies allow for alternative resolutions, including remedial actions, education, conflict resolution, and restorative justice, particularly in cases of “bias-related” conduct that “does not otherwise rise to the level of discrimination or harassment under this EO Policy.” None of these resolutions were attempted in the case of Professor Finkelstein. Instead, after the

administration made the “inference,” after the fact, that Zionism is a protected class, the case against Professor Finkelstein proceeded.

The equation of anti-Zionist speech and discriminatory speech is related to the ongoing debate about “antisemitism.” Kenneth Stern, the lead drafter of the “working definition of antisemitism” used by the International Holocaust Remembrance Alliance (IHRA), himself has cautioned about “weaponizing” the definition through Title VI cases. He has also noted, “There's a debate inside the Jewish community whether being Jewish requires one to be a Zionist. I don't know if this question can be resolved, but it should frighten all Jews that the government is essentially defining the answer for us.”³⁴ We would extend that caution to say: It should frighten all academics that college and university administrators are defining the answer for us.

2. The Hillel Fundraiser Post

Although this post was not formally included as grounds for Professor Finkelstein's dismissal, and ostensibly was not a basis for that decision, it received much attention when initially posted, was discussed extensively in the D. Stafford report, was mentioned frequently by faculty members interviewed by this committee, and was the catalyst for the Change.org petition targeting Professor Finkelstein.

Media outlets reporting on the post in relation to the US Department of Education's Office for Civil Rights investigation stated, to quote a representative source, that “the professor had entered the Hillel space on campus, photographed a student fundraising display for ‘the various war efforts in Israel’ and posted denigrating comments on Instagram regarding

33. It is worth noting however, that the D. Stafford report appears to employ a definition of discrimination that differs from the college's. Muhlenberg's policy, like that of many other institutions, states that to make a case for discrimination, the relevant act has to be taken against a member of a protected class. However, the investigative report states, “Dr. Finkelstein's post also assumed that all Zionists agree with the actions of the Israeli government, therefore excluding someone who may not agree with some or all of the government's choices. This would be a discriminatory practice, just as it would be if she stated other identity groups with or without protected status (e.g., Student Athletes, Republicans, Democrats, Russians, Atheists) were not welcome in her class and that they should be made to feel uncomfortable.” By inserting the words “or without” in front of “protected status,” the D. Stafford report not only sidesteps the issue of whether Zionism is a protected class; it also negates the meaning of *discrimination* as it is used in Muhlenberg's policies and, indeed, in federal, state, and local antidiscrimination law. To put it another way, a “bias-related incident” cannot, under Muhlenberg's policies, lead to a claim of discrimination unless the action was taken against a member of a protected class.

34. Kenneth Stern, “I Drafted the Definition of Antisemitism. Rightwing Jews Are Weaponizing It,” *The Guardian*, December 13, 2019, <https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect>. The AAUP's *Legislative Threats to Academic Freedom: Redefinitions of Antisemitism and Racism* notes the following regarding the IHRA's definition of antisemitism: “The problem with the definition, as its many critics have pointed out, is that it equates criticism of the policies of the state of Israel with antisemitism. Fifty-six scholars of antisemitism, Jewish history, and the Israel-Palestine conflict have called the IHRA definition ‘highly problematic and controversial,’ noting that it privileges the political interests of the state of Israel and suppresses discussion and activism on behalf of Palestinian rights. It has provided a pretext to bring coercive legal actions against supporters of the boycott, divestment, and sanctions movement, denying proponents of this peaceful form of economic and cultural protest their freedom of expression.”

the students.”³⁵ As noted previously, the Hillel fundraising display in the Leffell Center was installed outside a classroom. Professors and students could not enter that classroom without walking by the display. The display itself was not confined to a table but covered several feet of wall space on both sides of the table with photographs of kidnapped Israelis.

The language of safety, often used in complaints of discrimination, is worth exploring. According to the D. Stafford report, in their complaints about Professor Finkelstein’s post, some students and staff associated with Hillel stated that it made them feel “unsafe.” According to the transcript of her February 16, 2024, interview with the D. Stafford investigators, Director Storm said, “If you were a Hillel student involved in that fundraiser, I’m sure that you would be mad, right? But I don’t believe that any of the students felt, at least I didn’t hear that students felt that they feared for their safety. They definitely said, ‘We feel uncomfortable with her in the building’ and had used the word, ‘We feel unsafe with her in the building.’ But when I drilled down to that ‘unsafe,’ they were still saying, ‘No, we’re still coming to Hillel, we’re still accessing services.’ So, *it wasn’t materially changing the course of their experiences. And so, for me, as a Title VI coordinator, that’s a big threshold that I have to meet*” (emphasis added).

It appears that Professor Finkelstein’s presence did not prevent students from accessing Hillel. The fundraising display, on the other hand, as it was situated near the only entrance to the academic spaces in the building (immediately outside a classroom), reportedly made some students and faculty members so uncomfortable that teachers asked to have their courses relocated. At the time of Professor Finkelstein’s post, three professors in addition to Professor Finkelstein used classrooms adjacent to the fundraising display. When two of them expressed concerns about it, their classes were moved out of the building. According to the D. Stafford report, students in one class voted *unanimously* to move their class out of the Leffell

Center because of their “discomfort” over the fundraising display. All three professors, including Professor Finkelstein, expressed concerns about an “academic space” being used, as Professor Finkelstein told the D. Stafford interviewers, “for a giant fundraiser for a foreign military.” Another professor who frequently uses a classroom in the Leffell Center informed the D. Stafford investigators that he was concerned that the display might negatively affect his students “regardless of what their views might be on any particular issue or whatever background they might come from, that it might alter their frame of mind or make them feel stressed out or upset or bring up potentially negative emotions . . . [and] that this might have a disruptive effect on the classroom environment that I was trying to create before every class.”

One faculty member who used the building informed this committee, “I felt complicit having to walk through the hallway with an Israeli flag, photos of IDF soldiers, [and] birthright posters just to get to my classroom and talk about racism.” Another faculty member who taught in the classroom next to the display made the following comments to the D. Stafford investigators: “It was a concern of mine that, in addition to possible disruptive effects that this display might have on students’ frame of mind as they were preparing for class and how that might negatively impact learning opportunities or experiences, . . . having to navigate or move past a display like that might reasonably be expected to make students with certain backgrounds feel not welcome or not able to equally access educational spaces or opportunities including our classes that are being taught in that academic space.”

Our consideration of the series of events that followed the Hillel fundraiser and Remi Kanazi posts leads this committee to observe that the Hillel Center’s fundraising display in a building that also serves as an academic space could be perceived as having prevented some students from accessing educational opportunities. That series of events also elicits the question whether the posts of the Hillel-affiliated WhatsApp group of 160 students and staff members that circulated screenshots of Professor Finkelstein’s posts and urged students to file complaints created a hostile educational environment by spreading fear and misinformation about a professor. As the D. Stafford report noted, “Dr. Finkelstein did not broadcast her posts to the Muhlenberg community, even though she was aware people were watching her social media; others, including staff and students, were sharing her posts widely.” But, the report continued, “it is unclear why staff members would intentionally share

35. “Muhlenberg College Resolves DOE Investigation into Its Response to Complaints About Professor’s Comments,” WFMZ News, September 20, 2024, https://www.wfmz.com/news/area/lehighvalley/muhlenberg-college-resolves-doe-investigation-into-its-response-to-complaints-about-professors-comments/article_3ad09886-7f7e-11ef-8617-9762202ea805.html; Steven Lubet, “Zionists Are Students Too: University Professors Should Take Heed,” *The Hill*, October 14, 2024, <https://thehill.com/opinion/education/4929703-muhlenberg-college-fired-professor/>.

posts that they know will cause distress to their students. One could argue that they were contributing negatively to the educational environment.”

Given the mythos created around Professor Finkelstein, it should not be surprising that a student associated with Hillel whom she had never met would have lodged a formal complaint against her. In her interview with D. Stafford, that student stated that while she did not know any students who had withdrawn from one of Professor Finkelstein’s classes, she herself would never consider enrolling because, she said, “Her classes are probably going to make me uncomfortable because she’s going to be, most likely, spreading misinformation.” A professor informed this committee that he “had heard that some students avoided taking Professor Finkelstein’s courses for fear of being ostracized by Hillel, even though those students were curious about the course content.”

VIII. Conclusions

1. The administration of Muhlenberg College, in initially dismissing Professor Maura Finkelstein without demonstrating cause before an elected faculty body, acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure*, the *Statement on Procedural Standards in Faculty Dismissal Proceedings*, Regulations 5 and 6 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*, and the college’s own dismissal policy.
2. By initially dismissing Professor Finkelstein from the faculty solely because of one anti-Zionist repost on Instagram and without demonstrating—in fact, without ever seeking to demonstrate—a lack of professional unfitness, the Muhlenberg administration violated Professor Finkelstein’s academic freedom of extramural speech, as defined in the 1940 *Statement*.
3. The administration’s hasty action, facilitated by the monitoring and dissemination of Professor Finkelstein’s social media posts by administrators and Hillel staff, has severely impaired the climate for academic freedom at Muhlenberg College.
4. Employing a top-down process, with little transparency or faculty oversight, the Muhlenberg administration wrongly utilized the college’s equal opportunity and nondiscrimination policy to terminate Professor Finkelstein’s appointment in violation of normative standards of academic due process.
5. When the Faculty Policy and Procedures Committee was finally permitted to undertake a procedure consistent with AAUP-recommended standards and the faculty handbook, that committee found that the administration had not met its burden to demonstrate adequate cause for dismissing Professor Finkelstein, and the president’s ambiguous final determination does not contradict that finding.
6. The college’s equal opportunity and nondiscrimination policies, developed by outside consultants, do not sufficiently protect academic freedom and due process, nor do they comport with widely accepted standards of academic governance.
7. The Muhlenberg administration failed to make a compelling case that Professor Finkelstein’s reposting of Mr. Kanazi’s anti-Zionist statement violated the college’s equal opportunity and non-discrimination policy.

IX. Afterword

A brief discussion of the national context in which Professor Maura Finkelstein’s case took place, and its continued importance, is in order. Following the Hamas terrorist attack on October 7, 2023, Israel declared war on Hamas and began a sustained bombing campaign in Gaza. Reacting to the consequent loss of Palestinian civilian life, protests proliferated on campuses around the country against the US government’s support for Israeli government actions. Soon, powerful outsiders—including donors, legislators, and well-funded political organizations—escalated demands that college and university administrations crack down on what could be expressed on campus. “The phenomenon that goes by the shorthand October 7,” as Professor Louis Menand described it, provoked a crisis of academic freedom that reverberated through colleges and universities. As Professor Menand went on to explain, “The impression that some universities were not policing themselves competently, that their campuses were out of control, provided an opening to parties looking to affect the kind of knowledge that universities produce, who is allowed to produce it, and how it is taught—decisions that are traditionally the prerogative of the faculty.”³⁶

36. Louis Menand, “Academic Freedom Under Fire,” *The New Yorker*, April 29, 2024, <https://www.newyorker.com/magazine/2024/05/06/academic-freedom-under-fire>.

The April 17, 2024, testimony of Dr. Nemat Shafik, then president of Columbia University, before the US House Committee on Education and the Workforce represented a low point for academic freedom. Most shocking to many in the academic community was President Shafik's apparent willingness to negotiate with a member of Congress over disciplining two members of her own faculty, referred to by name, for things they had written or said. The next day President Shafik had more than a hundred student protesters arrested by New York City police and booked for trespassing on their own campus—Columbia having made their presence illegal by first suspending them. Other college and university administrations followed Columbia's lead by calling in riot police to break up widespread student encampments and arrest protesters. Many faculty members took part in the protests; some were swept up in the arrests, with a few being brutally beaten by the police.³⁷

In addition, new state legislation and institutional policies that chilled the climate for academic freedom were swiftly enacted, such as the Indiana Senate Enrolled Act 202 requiring that professors be disciplined, denied tenure, or have tenure revoked for failing to “foster a culture of free inquiry, free expression, and intellectual diversity” or to “expose students to scholarly works from a variety of political or ideological frameworks” and the University of Florida's recent decision to require campuses to identify all courses that might have “antisemitic material and/or anti-Israel bias.” Moreover, in apparent reaction to student protests, several college and university administrations hastily enacted overly restrictive policies dealing with the right to assemble and protest on campus. In August 2024, the AAUP issued a statement condemning policies that “go beyond reasonable time, place, and manner restrictions [and] impose severe limits on speech and assembly that discourage or shut down freedom of expression.”³⁸

37. See, Vimal Patel, “Police Treatment of a Dartmouth Professor Stirs Anger and Debate,” *The New York Times*, May 3, 2024, <https://www.nytimes.com/2024/05/03/us/dartmouth-professor-police-protests.html>, and Prem Thakker, “From UCLA to Columbia, Professors Nationwide Defend Students as Politicians and Police Attack,” *The Intercept*, May 2, 2024, <https://theintercept.com/2024/05/02/professors-students-gaza-university-protests-columbia/>.

38. “AAUP Condemns Wave of Administrative Policies Intended to Crack Down on Peaceful Campus Protest,” August 14, 2024, <https://www.aaup.org/news/aaup-condemns-wave-administrative-policies-intended-crack-down-peaceful-campus-protest>.

For example, some policies require advance registration for demonstrations, ban encampments, prevent students from concealing their identities by wearing masks or keffiyehs, limit the use of amplified sound, or increase disciplinary repercussions for activism.³⁹

Disciplinary actions against faculty members for their speech or conduct related to the war in Gaza also appeared to have increased in the months following October 7. Faculty members who contacted the AAUP for advice and assistance complained of having been summarily suspended from teaching or research, some having been given the additional sanction of expulsion or banishment from the entire campus or from certain areas and activities.⁴⁰ In these cases, institutions tended to treat faculty speech and conduct as acts of discrimination, harassment, or antisemitism and, as a result, adjudicated them under equal opportunity policies. Such policies usually entail immediate suspension during the pendency of an investigation in disregard of the AAUP-recommended standard that a suspension, as a severe sanction, must be preceded by a faculty hearing.

Dr. Finkelstein's case was especially egregious since it initially involved the outright dismissal of a tenured faculty member without a faculty body's involvement, but it would be naive of us to assume that it was unique or that it will be the last of its kind. The case drew national attention because Professor Finkelstein was tenured, but the weight of a repressive environment is much more likely to be felt by contingent faculty members, many of whom might be suspended, not reappointed, or dismissed without proper recourse and hardly any media coverage. Summarized below are some of the numerous cases that made the news in 2024.⁴¹

39. Declan Bradley and Garrett Shanley, “We Looked at Dozens of Colleges' New Protest Policies. Here's What We Found,” *The Chronicle of Higher Education*, September 12, 2024, <https://www.chronicle.com/article/we-looked-at-dozens-of-colleges-new-protest-policies-heres-what-we-found>.

40. As the AAUP's 2008 report *The Use and Abuse of Faculty Suspensions* (<https://www.aaup.org/report/use-and-abuse-faculty-suspensions>) observed, “Although Association policy severely limits its use, [suspension] appears to have become almost a routine recourse for administrations seeking to discipline faculty members regardless of the seriousness of the alleged cause.”

41. We note here the initial actions of the administration against faculty members regardless of the final outcomes of any appeals of which faculty members may have been allowed to avail themselves. Such actions sow fear and breed a culture of censorship, regardless of their eventual outcomes.

Dr. Abdulkader Sinno, a tenured associate professor in the Department of Political Science at Indiana University, was summarily suspended in January for allegedly failing to follow proper procedures to reserve a room and arrange for security support for a public event organized by the Palestine Solidarity Committee, a student group he advises.⁴²

A well-known advocate for Palestinian causes, Mr. Amin Husain, who served as a part-time faculty member of art and art professions in the Steinhardt School of Culture, Education, and Human Development at New York University, was also summarily suspended in January pending investigation of an institutional equal employment opportunity complaint against him.⁴³

Dr. Tomasz Skiba, a part-time faculty member in psychology also serving at New York University, was summarily suspended in February pending an investigation into a complaint filed with the institution's equal opportunity office regarding a social media repost related to the war in Gaza.⁴⁴

Dr. Jairo Fúnez-Flores, an assistant professor of education at Texas Tech University, was summarily suspended in early March during a university office of equal opportunity investigation. The suspension was preceded by the online publication of a February 22 *Texas Scorecard* article alleging that the professor had posted antisemitic remarks on his social media accounts.⁴⁵

Dr. Joseph Massad, a tenured professor in the Department of Middle Eastern, South Asian, and African Studies with twenty-five years of service at Columbia University, was notified on April 23, 2024, of the initiation of a formal investigation into allegations that two of his publications about the October 7 Hamas attack on Israel had, according to the notice

letter, "subjected members of the Columbia community to harassment and discrimination based on their national origin and/or religion, including by deprivation of the ability to complete course requirements due to a perceived lack of safety in [his] classroom." The administration initiated the investigation in the context of former president Shafik's April 17 congressional testimony in which she stated that Professor Massad had been reprimanded and removed from his position as chair of the Academic Review Committee for his allegedly antisemitic publications, an account that he disputed.⁴⁶

In the same congressional hearing President Shafik did not correct the record regarding Professor Katherine Franke, a tenured professor of law with twenty-five years of service at Columbia. When Congresswoman Elise Stefanik asked then-President Shafik what disciplinary actions had been taken against "Professor Katherine Franke from Columbia Law School, who said that 'all Israeli students who have served in the IDF are dangerous and shouldn't be on campus,'" President Shafik responded, "I agree with you that those comments are completely unacceptable and discriminatory." According to Professor Franke, President Shafik was aware at that time that Congresswoman Stefanik's summary was inaccurate, but she did not correct her. Soon after, Professor Franke faced an investigation based on a statement she had made in a *Democracy Now!* interview.⁴⁷

Dr. Jodi Dean, a tenured professor in the Department of Political Science at Hobart and William Smith Colleges with thirty years of service at the institution, was informed through a letter

42. "APSA Statement on Indiana University's Sanctioning of Professor Abdulkader Sinno," *Political Science Now*, February 9, 2024, <https://politicalsciencenow.com/apsa-statement-on-indiana-universitys-sanctioning-of-professor-abdulkader-sinno/>.

43. Bruna Horvath, "Professor Suspended After Criticism of Israel-Hamas War Coverage," *Washington Square News*, January 29, 2024, <https://nyunews.com/news/2024/01/29/pro-palestinian-professor-suspension/>.

44. Adrianna Nehme, "Another Professor Suspended After Posts Related to Israel-Hamas War," *Washington Square News*, February 2, 2024, <https://nyunews.com/news/2024/02/02/nyu-suspends-steinhardt-professor/>.

45. Marjorie Valbrun, "Texas Tech Professor on Leave for 'Hateful, Antisemitic' Comments," *Inside Higher Ed*, March 5, 2024, <https://www.insidehighered.com/news/quick-takes/2024/03/05/texas-tech-professor-leave-hateful-antisemitic-comments>.

46. Stephanie Saul, "Who Are the Columbia Professors Mentioned in the House Hearing?," *The New York Times*, April 17, 2024, <https://www.nytimes.com/2024/04/17/nyregion/jospeh-massad-katherine-franke-mohamed-abdou-columbia-university.html>.

47. The interview concerned the use of a foul-smelling spray against pro-Palestinian protestors at Columbia, allegedly by graduate students who were former Israeli soldiers. Professor Franke noted that a university program enrolled older graduate students from other countries, including Israel, adding, "It's something that many of us were concerned about, because so many of those Israeli students, who then come to the Columbia campus, are coming right out of their military service. And they've been known to harass Palestinian and other students on our campus. And it's something the university has not taken seriously in the past." "Professors Slam Columbia's Response to Chemical Skunk Attack on Students at Pro-Palestine Protest," *Democracy Now!*, January 25, 2024, https://www.democracynow.org/2024/1/25/columbia_palestine_protest_attack.

from President Mark Gearan to the entire campus community that she had been “relieved of classroom duties” and would be under investigation for her remarks about October 7.⁴⁸ The suspension and investigation were the result of her having written “a piece for Verso on the war in Israel and Gaza” in which she “spoke about feeling exhilarated and energized by the paragliders,” according to the campus-wide email. The president alleged that “as a result of Professor Dean’s comments, there now may be students on our campus who feel threatened in or outside of the classroom.” A week later the provost followed up with a letter informing Professor Dean that “the Colleges will begin an investigation to determine whether you have violated policies and/or standards of the Colleges by harassing and/or discriminating against Jewish and/or Israeli community members.”

Dr. Anne D’Aquino, adjunct professor of biology at DePaul University, was dismissed after she gave an optional assignment related to the war in Israel and Gaza. The optional assignment offered students the ability to write about “the impacts of genocide on human biology.” The theme of the spring class at the Chicago institution was how microorganisms cause disease. According to the syllabus, the course explores microbiology research and its relevance to everyday life, current events, and “big picture impacts on individuals and communities.”⁴⁹

Faculty members are not the only ones at risk. President Trump’s executive order “Additional Measures to Combat Anti-Semitism” calls for institutions to “monitor for and report activities by alien students and staff” and to ensure “that such reports about aliens lead, as appropriate and consistent with applicable law, to investigations and, if warranted, actions to remove such aliens.”⁵⁰ A fact sheet accompanying the order states that the administration will “aggressively enforce the law, protect public order, and prosecute anti-Semitic crimes.” It ends with an

ominous warning and “promise” from President Trump: “To all the resident aliens who joined in the pro-jihadist protests, we put you on notice: come 2025, we will find you, and we will deport you. I will also quickly cancel the student visas of all Hamas sympathizers on college campuses, which have been infested with radicalism like never before.”⁵¹

In light of the above and of what we believe will be a rapid escalation in the uses and abuses of Title VI and equal opportunity policies on campus, we make the following recommendations.

1. Faculty members should be meaningfully involved in drafting and revising Title VI and equal opportunity policies to ensure faculty participation in all stages of the process, including adjudication and sanctions.
2. Any major sanction against a faculty member (regardless of rank or tenure status), such as dismissal or suspension from service, must not be effected through an equal opportunity policy alone. The imposition of such a sanction should follow AAUP-recommended standards, which specifically provide for a predissmissal or presuspension hearing before an elected faculty body in which the administration bears the burden of demonstrating adequate cause. A clear and convincing standard of proof rather than preponderance of evidence should be used in all cases.
3. Institutions should not outsource Title VI and equal opportunity policies to third parties, like ATIXA, that produce identical policies for faculty, staff, and students. Such policies cannot adequately take into account academic freedom, due process, and faculty governance. The implementation and administration of such policies and any resultant sanctions and appeals should be the purview of elected faculty committees, not risk-management consultants like TNG.
4. Faculty members must challenge the belief that feelings of “safety” and “comfort” outweigh a commitment to academic freedom. Administrations have co-opted the language of threat and harm as a catchall that gives them license to proceed in haste and without affording academic due process.

48. “A Message from President Mark D. Gearan,” Hobart and William Smith Colleges, April 13, 2024, <https://www.hws.edu/offices/president/statements/a-message-from-president-mark-d-gearan.aspx>.

49. Sabrina Franza, “Adjunct Professor Fired by DePaul After Optional Assignment About Gaza,” CBS News Chicago, May 24, 2024, <https://www.cbsnews.com/chicago/news/adjunct-professor-fired-depaul-assignment-war-in-gaza-public-health/>.

50. <https://www.whitehouse.gov/presidential-actions/2025/01/additional-measures-to-combat-anti-semitism/>.

51. <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-forceful-and-unprecedented-steps-to-combat-anti-semitism/>.

Interference by trustees, governors, donors, and parents and executive orders and legislative bills that curtail academic freedom rightfully are critical concerns in academia these days. In focusing on the sensational, however, we may overlook the mundane. The disciplining of dissenting views and repression of academic freedom are also made possible through bureaucratic control of policies that seemingly address the minutiae of academic life. Equal opportunity policies are one such example. The cases of Professor Maura Finkelstein and many others since October 7 are reminders of the interdependence of academic freedom and governance as well as the importance of the faculty's role in establishing and overseeing policies. To be sure, having authority over sound policies and procedures may not always save those who find themselves in the crosshairs of political meddling, donor pressure, and administrative ambition or apathy. But without sound policies and appropriate faculty oversight of them, there is little recourse. ■

SCHRECKER (History), Yeshiva University; **JOAN WALLACH SCOTT** (Social Science), Institute of Advanced Study; **BRIAN SOUCEK** (Law), University of California, Davis; **CHARLES TOOMBS** (Africana Studies), San Diego State University; **VEENA DUBAL** (Law), University of California, Irvine, *ex officio*; **MIA MCIVER** (English), AAUP Washington Office, *ex officio*; **TODD WOLFSON** (Media Studies), *ex officio*

*Did not participate in the vote.

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AFSHAN JAFAR (Sociology)
Connecticut College, *chair*

EMILY M. S. HOUE (Law)
University of Cincinnati

RISA L. LIEBERWITZ (Law)
Cornell University

Committee of Inquiry

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **RANA JALEEL** (Gender, Sexuality, and Women's Studies and Asian American Studies), University of California, Davis

Members: **MARK S. JAMES** (English), Molloy College; **ANIL KALHAN** (Law), Drexel University; **RISA L. LIEBERWITZ*** (Law), Cornell University; **MICHAEL MERANZE** (History), University of California, Los Angeles; **PATRICIA C. NAVARRA** (Writing Studies and Rhetoric), Hofstra University; **JENNIFER H. RUTH** (Film Studies), Portland State University; **ELLEN W.**

ADDENDUM

Reply of Muhlenberg College to the AAUP Confidential Draft [Report]

[March 24, 2025]

Muhlenberg College (“the College”) submits this Reply to the AAUP Confidential Draft to correct, clarify and establish a more complete factual record based on the material facts, relevant policies, and pertinent issues in this matter.¹ The College reserves the right to submit a final Reply in the event that the AAUP modifies its Confidential Draft, or the circumstances change. At the time this Reply is being submitted, the faculty handbook process initiated by Professor Finkelstein at the College has not concluded and the President has not issued the final Determination and Outcome in the matter.

In the event the AAUP distributes, posts or communicates their Confidential Draft in any manner, the College requests that AAUP include with all distributions, posts, and communications, the College’s Reply. To fail to do so denies fair treatment, denies due process and denies presentation of a fair and accurate record.

I. Introduction

- The College’s Equal Opportunity policy incorporates best practices from a number of resources and led to the development of the Faculty Equal Opportunity policy and procedures, which were developed in collaboration with Muhlenberg faculty and endorsed by a vote of the Muhlenberg faculty.
- The College’s Faculty Handbook contains procedures for Faculty Problem Resolution that faculty members may use to address and resolve employment related issues. A faculty committee drafted the Faculty Handbook provisions and the faculty voted in approval of the Faculty Handbook provisions. The Board of Trustees approved these provisions.²

1. There are over twenty-five statements in the AAUP Confidential Draft that are not accurate, not material, and are taken out of context or contain speculation. In this Reply, the College provides material and accurate information, and reserves the right to further correct the full record.

2. The College is governed by a twenty-four member board of trustees chaired, since 2022, by Dr. Lance Bruck.

- Professor Finkelstein had full and fair access to the faculty-approved procedures contained in the Equal Opportunity Policy and the Faculty Handbook.
- Academic freedom and due process are incorporated into the Equal Opportunity and Faculty Handbook process, and the Equal Opportunity and Faculty Handbook procedures were followed. The cumulative effect of Professor Finkelstein’s conduct and its impact on the College community, including her post that called for the shaming of members of the Muhlenberg College community, was considered during the Equal Opportunity process by the Equal Opportunity Investigators, the Adjudication Panel, the Provost, and the Independent Appeals Officer in rendering their findings and recommendations. The same is being considered by the President as her review under the Faculty Handbook process continues.

II. Muhlenberg College is Dedicated to Providing an Inclusive Educational and Work Environment for all Students, Faculty

- The College’s mission aims to develop independent critical thinkers who are intellectually agile, characterized by a zest for reasoned and civil debate, committed to understanding the diversity of the human experience, able to express ideas with clarity and grace, committed to lifelong learning, equipped with ethical and civic values and prepared for lives of leadership and service.³
- The College’s policy on equal opportunity requires taking prompt and effective action to end any prohibited discrimination and harassment; remove any identified hostile environment caused by prohibited conduct; prevent recurrence of prohibited conduct; and to provide

3. In fall 2024, Muhlenberg enrolled approximately 1700 students in the residential undergraduate program and 100 adult learners in continued education and graduate programs.

prompt, fair, and equitable resolution of allegations of prohibited conduct.

- The College endorses the AAUP policy on Academic Freedom that calls for the freedom of a teacher or researcher in higher education to investigate and discuss the issues in their academic field; to teach and publish findings without interference from administrators, boards of trustees, political figures, donors, or other entities; and to fulfill their “special obligations” and always be informed, accurate, discreet and respectful towards the opinions of others.
- College Faculty members are expected to be dedicated to teaching, mentoring students, and engaging in scholarly activity, while also contributing to the college community through service and promoting a welcoming and inclusive environment.

III. Chronology of Key Events

Contrary to the AAUP Draft, the key factual events as established by the evidence establish:

- Following Professor Finkelstein’s posts in October 2023, she filed a report about student communications and related to the Provost and Equal Opportunity Director that she was uncomfortable and requested supportive measures, such as moving her classes to another building and requesting that a student cease communication with her. These measures were put in place. At that time, Professor Finkelstein related that she wanted to stay in her office and use an alternative entrance. The College agreed and the Provost reminded Professor Finkelstein that students view content that is posted on her personal social media accounts. The Provost noted the potential impact of the posts on students and faculty and requested that she consider it moving forward.
- On October 21, 2023, Professor Finkelstein posted a message on social media that included a photo of a fundraising event in the main space of the Leffell Center for Jewish Life and a message that included, “Students raising money for genocide...”. (the Hillel post) While “[s]he did not tag Muhlenberg or disclose where the photograph was taken,” the Muhlenberg community easily identified the Muhlenberg location.
- Following the Hillel post, Professor Finkelstein, in a meeting with the Provost and Equal Opportunity Director, related that at the time she was

not fearful or unsafe but that she was receiving communications that made her uncomfortable. It was agreed that she would teach her classes remotely, not be on campus and that she wanted to remain in her office. The Provost and EO Director related a number of concerns that the College received and again requested that Professor Finkelstein consider the impact of her communications on faculty, students and staff.⁴

- After a non-college petition was posted on Change.org, social media messages were posted by Professor Finkelstein, and an article was published in the student newspaper, the Provost and the Equal Opportunity Director met again with Professor Finkelstein, and they agreed to the following supportive measures:
 - Professor Finkelstein would cease contact with the editor of the student newspaper;
 - Professor Finkelstein would teach classes online and not be on campus for the week; and,
 - Professor Finkelstein would consider moving her office.
- The next day, November 6, 2023, the Provost informed Professor Finkelstein by email that an alternative office was available and the office key was available in the Provost’s office. Professor Finkelstein replied to the Provost that after “reflecting” she realized that she did not feel safe on campus at the time, that she would move her classes online through the Thanksgiving holiday, and then “reassess.” The Provost replied that Professor Finkelstein’s plan worked for her and to keep communications open.
- On November 8, 2023, Professor Finkelstein posted a message on social media that provided, “What to wear when you’re called in to yet another meeting intended to stop you from calling a genocide a genocide...” On the same date, the Provost and Equal Opportunity Director met with Professor Finkelstein’s department.
- On November 10, 2023, the Provost and Equal Opportunity Director met with Professor Finkelstein, and she confirmed that she was not planning to be on campus until after Thanksgiving and that she was not planning to enter the Hillel space. The Provost and Equal Opportunity Director confirmed that the office move was not in effect.

4. During this time supportive measures were offered to other faculty, based on their concerns.

- [O]n January 17, 2024, the College received a Notice of Investigation from the Office of Civil Rights (OCR) that OCR had received a complaint that alleged, “the College discriminated against students on the basis of national origin (shared Jewish ancestry) by failing to respond to harassment by a Professor in October[.]”
- On January 17, 2024, the Provost informed Professor Finkelstein about the OCR Notice of Investigation, including the reference to the Professor.
- On January 17, 2024, Professor Finkelstein reposted a post on Instagram that called for the shaming of Zionists, stating, “Do not cower to Zionists. Shame them. Do not welcome them in your spaces. Do not make them feel comfortable. Why should those genocide loving fascists be treated any different than any other flat out racist. Don’t normalize Zionism. Don’t normalize Zionists taking up space.” (the “Do Not Cower” post)
- After Professor Finkelstein’s “Do not Cower” post, Professor Finkelstein was placed on paid administrative leave pending an investigation. During her paid administrative leave, Professor Finkelstein had no duties or responsibilities at the College. Consistent with College policies relating to a paid administrative leave, Professor Finkelstein’s email account was suspended.
- The College found that under the Equal Opportunity Policy, Professor Finkelstein’s “Do Not Cower” post targeted a group of students and may have been a potential policy violation.
- A review of the Professor Finkelstein matter proceeded per the impartial and fair procedures under the Equal Opportunity Policy.
- On August 13, 2024, Professor Finkelstein initiated the Faculty Problem Resolution procedures contained in the Faculty Handbook. The matter proceeded at the direction of the FPPC and Professor Finkelstein was afforded a faculty dismissal hearing, per the Faculty Handbook procedures.
- The Faculty Handbook procedures have not concluded.

IV. Each Member of the Academic Staff is Entitled to Freedom In the Classroom and Expected to be Respectful Toward the Opinions of Others.

A. Professor Finkelstein’s Conduct and Fitness to Teach was Assessed per the Equal

Opportunity Policy and Faculty Handbook.

- The College, at all times, has and will continue to endorse and uphold the AAUP Statement on Academic Freedom as contained in the Faculty Handbook.
- During the Equal Opportunity and Faculty Handbook procedures, Professor Finkelstein’s fitness to teach was assessed in conjunction with the cumulative impact of her conduct on the College community and, in particular, the impact of the “Do Not Cower” post on students and their educational experience.
- Professor Finkelstein was afforded a fair and equitable process under the Equal Opportunity process and a pre-dismissal hearing as provided by the Faculty Handbook.

B. There is a Culture of Respect, Non-Discrimination and Inclusion at the College

- The College at all times is required to stop, prevent and protect students and employees from conduct that discriminates against, harasses or excludes them based on their actual or perceived shared ancestry.
- College professors have academic freedom “in the classroom in discussing subject matter and are expected to be fair and responsible in this regard. but their special position in the community imposes special obligations of responsibility. These require a learned person and educator to constantly recognize that both the teaching profession and the College may be judged by such faculty or adjunct faculty member’s actions and utterances” ...“an academic staff member must always be informed, accurate, discreet, and respectful toward the opinions of others....” (Faculty Handbook 4.2)
- There is not a culture of surveillance at the College. The College complies with its obligations to stop, prevent and protect students and employees from conduct that discriminates, harasses or excludes them based on their identities.

C. The College is sound and exercises civility at all times.

- The College has not “been coping with the effects of financial austerity.” The College, like

most colleges and universities in the country, has faced declining student enrollments and such declines, logically, impact a College's budget, operations and personnel.

- In 2022, a Faculty Task Force submitted recommendations to the President that included scaling the size of the faculty to the college's student population. Reduction in faculty resulted entirely from retirements and attrition.
- Shared governance, academic freedom and civil discourse remain vibrant at the College.

V. The AAUP standards are incorporated in the College's Equal Employment Policies and Procedures, and the Faculty Handbook

- The Equal Opportunity process is a fair and equitable process that the faculty overwhelmingly voted to endorse in November 2018 prior to final approval by the Board of Trustees. The Faculty Personnel and Policies Committee ("FPPC") were involved in developing and providing feedback on the policy. The Faculty Meeting minutes from the November meetings, which were shared with the AAUP investigators, state that the then-Chair of FPPC "noted this is an example of exceptional faculty governance."
- The Faculty Handbook incorporates the AAUP dismissal standards in provisions of the Handbook, and these procedures were approved by the faculty. The College, with input from the faculty, review the Equal Opportunity Policy and update the procedures to ensure consistency with best practices and the law.
- A Faculty Committee reviews the Faculty Handbook procedures on a regular basis.

VI. Academic Governance: The College Balances Transparency with Respect for the Confidential Nature of Personnel and Student Matters.

- The faculty collaborated in writing and developing the Equal Opportunity Policy, and the faculty endorsed the Equal Opportunity Policy, including the procedures related to the adjudication panel and appeals officer.
- The Equal Opportunity Policy is reviewed and updated, including opportunity for input from faculty.

- The sociology and anthropology department were updated in a timely manner while maintaining the confidentiality of the Equal Opportunity process and personnel/student matters. For example, the Provost met in person with the department on January 24, 2024, as soon as conveniently possible for the faculty, after Professor Finkelstein was placed on paid administrative leave on the afternoon of January 22, 2024. The meeting occurred in the department conference room, and interim leadership for the department and options for staffing classes were discussed with faculty in the department, who were informed that Profes[s]or Finkelstein was on a paid leave.⁵

VII. Title VI and Equal Opportunity Policies: The College Upholds its Obligations under the Law and Its Mission and Values to Assure Non-Discrimination and an Inclusive Environment.

A. Zionism and Protected Class Status

- The College policies are grounded in the law including Title VI, VII and Title IX of the Civil Rights Act of 1964.
- The College complies with the law and regulations that are issued by the Department of Education and the Office of Civil Rights.
- While there is not a College definition of "Zionists," the College applied the factors contained in the Equal Opportunity policy; the OCR determinations and guidance on Title VI; and the time, place and manner of the circumstances related to Dr. Finkelstein's conduct and communication.⁶
- Per the OCR, the College is required to provide OCR with documentation sufficient to show that the Professor, based upon the totality of the circumstances, created a hostile environment for Jewish students on campus.

5. The President informed the faculty in October 2024, that the AAUP would not be visiting on campus to conduct interviews. She did not indicate that the committee was no longer interested in Professor Finkelstein's dismissal.

6. The Equal Opportunity process does not define other identities and consistent with the OCR, the Equal Opportunity policy does not define identities.

- The College endorses the AAUP policy on Academic Freedom that calls for the freedom of a teacher or researcher in higher education to investigate and discuss the issues in their academic field; to teach and publish findings without interference from administrators, boards of trustees, political figures, donors, or other entities; and to fulfill their “special obligations” and always be informed, accurate, discreet and respectful towards the opinions of others.

B. Professor Finkelstein’s Social Media Posts

1. The Hillel Fundraiser Post that Stated Students Raising Money for Genocide.
 - Dr. Finkelstein’s post about the Hillel Fundraiser in the Leffell Center for Jewish Life referencing students raising money for genocide negatively impacted students, faculty and staff at Muhlenberg College, including those of Jewish ancestry.
2. The Remi Kanazi Repost that Called for the Shaming of Zionists.
 - The cumulative effect from Professor Finkelstein’s conduct and post that called for the shaming of Zionists and to “not welcome them in your spaces,” impacted the College community, including students at Muhlenberg College.
 - It was found that the cumulative effect of Professor Finkelstein’s conduct and post that called for the shaming of Zionists and to “not welcome them into your spaces,” violated College policy.

VIII. Conclusions

- The College’s Equal Opportunity Policy incorporates best practices from a number of resources that resulted in Faculty Equal Opportunity Policy and procedures that were voted on and endorsed by Muhlenberg faculty in November 2018 prior to final approval by the Board of Trustees. The Faculty Personnel and Policy Committee (FPPC) was involved in developing and providing feedback on the policy. The Faculty Meeting minutes from the November 2018 meetings, which were shared with the AAUP Investigators, state that the then-chair of FPPC “noted this as an example of exceptional faculty governance.”

- The College’s Faculty Handbook process contains procedures for Faculty Problem Resolution that faculty members may use to resolve employment related issues. A faculty committee drafted the Faculty Handbook provisions and the faculty voted on the Faculty Handbook provisions. The Board of Trustees approved these provisions.
- Professor Finkelstein had full and fair access to the faculty-approved procedures contained in the Equal Opportunity Policy and the Faculty Handbook. Academic freedom and due process are incorporated into the Equal Opportunity and Faculty Handbook process and the Equal Opportunity Policy and Faculty Handbook procedures were followed. The cumulative effect of Professor Finkelstein’s conduct and its impact on the College community, including when her post called for the shaming of members of the Muhlenberg College community, was considered by the Equal Opportunity Investigators, the Adjudication Panel, the Provost, and the Independent Appeals Officer in rendering their findings and recommendations. The same is being considered by the President as her review under the Faculty Handbook process continues.

IX. Afterword

The College acts at all times in a manner that is consistent with the law, with its faculty approved policies, and notes:

- Faculty have been and will continue to be meaningfully involved in the College’s Equal Opportunity and Faculty Handbook process.
- Faculty have full and fair access to the College’s Equal Opportunity and Faculty Handbook process.
- The College incorporates best practices from a number of sources, including faculty, in the administration of its Equal Opportunity and Faculty Handbook process.
- Academic freedom and due process are incorporated into the College’s Equal Opportunity and Faculty Handbook process.