



Sexual Misconduct Policy
2018-2019

Sexual Misconduct Policy

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I. Institutional Values and Community Expectations and Notice of Non-Discrimination

Union College is an educational community where strong emphasis is placed on self-discovery and awareness. Where such an atmosphere exists for freedom of expression, however, it must always be combined with a mutual respect and consideration for the lives and feelings of others. In such a setting, there is no place for conduct that diminishes, uses, or abuses other individuals. Any violation of trust, any form of sexual intimidation, exploitation, or discrimination jeopardizes the mission of the institution and threatens the educational experience and well-being of students, staff, or faculty. Union College will not tolerate sexual misconduct, and the institution will take appropriate action, as deemed necessary, to prevent and address such conduct.

It is the policy of Union College to maintain an environment for students, faculty, administrators, staff, and visitors that is free of all forms of discrimination and harassment, including sexual misconduct. The College has enacted this Sexual Misconduct Policy (the “Policy”) to reflect and maintain its institutional values and community expectations, to provide for fair and equitable procedures for determining when this Policy has been violated, and to provide recourse for individuals and the community in response to violations of this Policy.

This Policy prohibits all forms of sexual or gender-based discrimination, harassment, and misconduct, including sexual assault, non-consensual sexual contact, intimate partner violence, sexual exploitation, and stalking. This Policy also prohibits retaliation against a person who reports, complains about, or who otherwise participates in good faith in, any matter related to this Policy. All of the foregoing conduct shall be referred to as “Prohibited Conduct.”

Union does not discriminate on the basis of sex in its educational, extracurricular, athletic, or other programs or in the context of employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Sexual harassment is also prohibited under Title IX, Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and other applicable statutes. This Policy prohibits sexual harassment against Union community members of any sex, sexual orientation, gender identity, or gender expression in the context of education or employment. This Policy also prohibits gender-based harassment that does not involve conduct of a sexual nature.

A healthy and productive educational community is one in which students, faculty, and staff all treat each other with mutual respect. Nothing in this policy statement should be taken to supersede the College’s commitment to the free and vigorous discussion of ideas and issues, which this policy preserves. Union College is committed to protecting the academic freedom and freedom of expression of all members of the College community. This policy shall be applied in a manner that protects the academic freedom and freedom of expression of all parties to a complaint. Academic freedom and freedom of expression include, but are not limited to, expression of ideas, however

controversial, in the classroom, residence hall, and in work places everywhere in the College community.

The College strongly encourages all members of our community to take action to maintain and facilitate a safe, welcoming, and respectful environment on campus. In particular, the College expects that all Union community members will take reasonable and prudent actions to prevent or stop Prohibited Conduct. The College strongly supports individuals who choose to take such action and will protect such individuals from retaliation.

Upon receipt of a report, the College will take prompt and equitable action to eliminate the Prohibited Conduct (if any), prevent its recurrence, and remedy its effects. In addition, the College will fulfill its obligations under the Violence Against Women Reauthorization Act of 2013 (“VAWA”) amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) in response to reported Prohibited Conduct. The College’s processes for investigating and responding to reported Prohibited Conduct are contained in the following appendices: Appendix A: Resolution of a Complaint Against a Student; Appendix B: Resolution of a Complaint Against a Faculty Member; and Appendix C: Resolution of a Complaint Against an Employee. Students or employees who are found to have violated this Policy may face disciplinary action up to and including expulsion (students) or termination of employment (faculty or staff).

Union also prohibits other forms of discrimination and harassment, including discrimination and harassment on the basis of race, color, national origin, ancestry, age, religious belief, marital status, physical or mental disability, medical condition, veteran status, or any other characteristic protected by federal, state, or local law. Such prohibited conduct is addressed in other College policies prohibiting discrimination, harassment and retaliation based on protected status. Sexual harassment is a form of sex discrimination and is covered under this Policy. Sex discrimination that is not sexual harassment, including allegations of disparate treatment, is addressed in other College policies.

The College provides a number of rights to complainants in accusations of misconduct and to those accused of sexual misconduct including, but not limited to, the following:

A. Campus Sexual Misconduct Bill of Rights

1. Complainant

If you file a report of sexual misconduct (the complainant), you have the right to:

- Make a report to a College official with knowledge about the College Sexual Misconduct Policy, reporting options, and resources.
- Obtain assistance from College officials to make a report to local law enforcement and/or state police.
- Information about on and off campus resources including intervention, mental health counseling, and medical services, which shall include information on whether such resources are available at no cost or for a fee.

- Information about sexually transmitted infections, sexual assault forensic examinations, and resources available through the New York State Office of Victim Services (found at <https://ovs.ny.gov/>)
- Information about the range of interim accommodations and remedies.
- Have disclosures of sexual misconduct, relationship violence, sexual harassment, or stalking treated seriously.
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the College.
- Be treated with dignity and to receive from the College courteous, fair, and respectful health care and counseling services, where available.
- Be free from any suggestion that you are at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations.
- Describe the incident to as few College representatives as practicable and not be required to unnecessarily repeat a description of the incident.
- Be protected from retaliation by the College, any student, staff, or faculty member, the respondent, and/or his/her friends, family, and acquaintances within the jurisdiction of the College.

2. *Respondent*

As a party accused of sexual misconduct (the respondent), you are entitled to:

- Be treated with dignity and respect by College officials.
- Be afforded the right to a presumption of not responsible until a finding of responsibility is made in accordance with the procedures defined in this policy.
- Receive from the College campus support resources (Counseling Services, the Office of Religious and Spiritual Life, Human Resources, and Health Services).

3. *Both Parties*

The complainant and respondent have the following rights:

- To be able to exercise their civil rights and practice religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.
- To request a campus “no contact order” against the other party.
- To have an advisor of their choice (including legal counsel who they have retained) to assist in, and/or offer advice on, reporting and filing a complaint (if the

complainant) and responding to a complaint (if the respondent); and to be present throughout the investigative process (while meeting with investigators), during informal resolution discussions with the Title IX Team, and/or throughout critical stages of the Formal Complaint Resolution process, as requested.

- To have the rights set forth under the Formal Resolution Procedures.
- Access to at least one level of appeal of a determination.

II. Scope of Policy

This Policy applies to all reports of Prohibited Conduct occurring on or after the effective date of this Policy. Where the date of the reported Prohibited Conduct precedes the effective date of this Policy, the definitions of misconduct in existence at the time of the report will be used. The Grievance Process under this Policy, however, will be used to investigate and resolve all reports made on or after the effective date of this Policy, regardless of when the incident(s) occurred.

When used in this Policy, “Complainant” refers to the individual who is identified as the subject of Prohibited Conduct. “Respondent” refers to the individual alleged to have engaged in Prohibited Conduct. A “Third-Party” refers to any other participant in the process, including a witness or an individual who makes a report on behalf of a Complainant.

A. Persons Covered

This Policy applies to all Union community members including students, faculty, administrators, staff, volunteers, vendors, contractors, visitors, and individuals paid or unpaid, regularly or temporarily employed, conducting business, studying, living, visiting, or having any official capacity with the College or on its property (collectively referred to as "any person covered").

The College strongly encourages reports of Prohibited Conduct regardless of who engaged in the conduct. Even if the College does not have jurisdiction over the Respondent, the College will take prompt action to provide for the safety and well-being of the Complainant and the broader campus community.

B. Locations Covered

This policy applies to conduct that occurs on any part of Union’s campus or property. It also applies when students, staff, or faculty travel off-campus as part of a College activity, team, organization, event, or College sponsored study abroad programs.

For students, Union College has the discretion to discipline behavior that occurs off-campus, in the City, and/or during a time when the College is not in session. In making these determinations, the Dean of Students considers whether the behavior impacts the campus environment (as would be the case, for example, if one student sexually assaults another student in an off-campus apartment or overseas during a term abroad, or if a student sends another student lewd and threatening sexual emails while at home during

the term break). In understanding this aspect of Union's expectations for student behavior, it may be helpful to think of student status as "portable" and therefore operative even when students are not on Union's campus or property.

For staff and faculty, Union College has the discretion to discipline behavior that occurs off campus. In making these determinations, the appropriate administrator or Title IX Team member considers whether the alleged action took place during a Union College sponsored event or activity or uses College property in a way to commit the alleged action. Additionally, any action taking place off site, for example, but limited to an email or communication from a home computer or behavior that affects the employment relationship may be considered a violation of this policy.

A complainant is encouraged to report misconduct regardless of where the incident occurred or who committed it. Even if the College does not have jurisdiction over the respondent, the College will still take prompt action to provide for the safety and well-being of the complainant and the broader community.

III. Applicable Procedures Under This Policy

The specific procedures for reporting, investigating, and resolving prohibited conduct are based upon the nature of the Respondent's relationship to the College (Student, Staff, Faculty member or Third Party). Each set of procedures referenced below is guided by the same principles of fairness and respect for Complainants and Respondents.

A Student, Staff or Faculty member determined by the College to have committed an act of prohibited conduct is subject to disciplinary action, up to and including separation from the College. Third Parties who commit prohibited conduct may have their relationships with the College terminated and/or their privileges of being on College premises withdrawn in accordance with the Rules of Public Order. Additionally, Union College will cooperate and participate with outside law enforcement as needed.

The procedures referenced below provide for prompt and equitable response to reports of misconduct. The procedures designate specific timeframes for major stages of the process and provide for thorough and impartial investigations that afford all parties notice and an opportunity to present witnesses and evidence and to view the information that will be used in determining whether a policy violation has occurred. The College applies the Preponderance of the Evidence standard when determining whether this policy has been violated. "Preponderance of the Evidence" means that it is more likely than not that a policy violation occurred.

A. When the Respondent is a Student

The procedures for responding to reports of misconduct committed by Students are detailed in section XI. Appendix A: Resolution of a Complaint Against a Student.

B. When the Respondent is a Faculty Member

The procedures for responding to reports of misconduct committed by a Faculty Member are detailed in section XII. Appendix B: Resolution of a Complaint Against a Faculty Member.

C. When the Respondent is a Staff Member/Employee of the College

The procedures for responding to reports of misconduct committed by staff or employees are detailed in section XIII. Appendix C: Resolution of a Complaint Against an Employee.

D. When the Respondent is Both a Student and Employee

1. The Student-Respondent procedures (Appendix A) will apply if the Respondent is a full-time Student but not a full-time Employee;
2. The Employee-Respondent procedures (Appendix C) will apply if the Respondent is a full-time Employee but not a full-time Student; or
3. If there is a question as to the predominant role of the Respondent, the College's Title IX Coordinator will determine which of the procedures applies based on the facts and circumstances (such as which role predominates in the context of the Prohibited Conduct). Further, where a Respondent is both a Student and an Employee, the Respondent may be subject to any of the sanctions applicable to Students or Employees.

E. When the Respondent is a Third Party

The College's ability to take appropriate corrective action against a Third Party will be determined by the nature of the relationship of the Third Party to the College. The Title IX Coordinator, in consultation with a senior administrator, will determine the appropriate manner of resolution consistent with the College's commitment to a prompt and equitable process consistent with federal law, federal guidance, state law, the Rules of Public Order, and this policy.

F. When a Complaint is Received from a Non-Employee

The College's ability to provide appropriate response will be determined by the nature of the relationship between the non-employee and the College. The Title IX Coordinator, in consultation with a senior administrator, will determine the appropriate manner of resolution consistent with the College's commitment to a prompt and equitable process consistent with federal law, federal guidance, state law, the Rules of Public Order, and this policy.

IV. Prohibited Conduct and Definitions

A. Sex or Gender-Based Discrimination

Sex or gender-based discrimination refers to the disparate treatment of a person or group because of that person's or group's sex, sexual orientation, gender identity or gender expression. Sexual harassment is a form of sex discrimination and is covered under this Policy. Sex discrimination that is not sexual harassment, including allegations of disparate treatment, is addressed in other College policies.

B. Sexual or Gender-Based Harassment

“Harassment” is conduct that creates an intimidating, offensive, or hostile working or learning environment or that unreasonably interferes with work or academic performance based on a person's protected status, including sex, sexual orientation, gender identity, or gender expression. All such conduct is unlawful.

“Sexual Harassment” is any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, physical, graphic, or otherwise.

“Gender-Based Harassment” is harassment based on sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, physical, graphic, or otherwise. To qualify as Gender-Based Harassment, the conduct need not involve conduct of a sexual nature.

Generally speaking, harassment can be divided into two types of conduct:

1. **Quid Pro Quo Harassment.** Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing, or participation in any aspect of a College program or activity or is used as the basis for the College's decisions affecting the individual.
2. **Hostile Environment.** A hostile environment exists when the conduct is sufficiently severe, pervasive, or persistent that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the College's education or employment programs and/or activities. Whether conduct is sufficiently severe, pervasive, or persistent is determined by using an objective standard of a reasonable person as well as the subjective standard of the Complainant.

Harassing conduct can take many forms. The determination of whether an environment is hostile is based on the totality of the circumstances, including but not limited to: (1) the frequency of the conduct; (2) the nature and severity of the conduct; (3) whether the conduct was physically threatening; (4) the effect of the conduct on the Complainant's mental or emotional state, with consideration of whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or College programs or activities; (5) whether the conduct was directed at more than one person; (6) whether the conduct arose in the context of other discriminatory conduct; and (7) whether the conduct in question is legally protected by academic freedom in accordance with the Academic Freedom Policy statement contained in the Faculty Manual (FM V.II), which is

adapted from the AAUP “1940 Statement of Principles on Academic Freedom and Tenure.” If the conduct is believed to be protected speech, it is incapable of legally creating a hostile environment in and of itself. To the extent allowed by applicable law, a determination of whether speech serves a pedagogical purpose is initially guided by the faculty speaker and his/her faculty peers (defined as senior members of the FEC), in accordance with grievance procedures to resolve a formal complaint of harassment which goes to hearing (see Appendix B).

A single isolated incident may create a hostile environment if the incident is sufficiently severe, particularly if the conduct is physical. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression is typically not sufficient to constitute a hostile environment. In determining whether speech constitutes harassment prohibited by this policy, the academic freedom of the faculty engaged in pedagogy will be taken into account.

Sexual or Gender-Based Harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the Complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, sexual orientation, gender identity, or gender expression.
- May occur in the classroom, in the workplace, in residential settings, or in any other setting.
- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the Parties are alone.

- May affect the Complainant and/or third Parties who witness or observe harassment and are affected by it.

Examples of conduct that may constitute Sexual Harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

- **Physical conduct**, including unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements, or unwanted sexual advances;
- **Verbal conduct**, including making or using derogatory comments, epithets, slurs or humor; verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations; or objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes;
- **Visual conduct**, including leering, making sexual gestures, displaying of suggestive objects or pictures, cartoons, or posters in a public space or forum; or severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate;
- **Written conduct**, including letters, notes or electronic communications containing comments, words, or images described above;
- **Quid pro quo conduct**, including direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists; offering educational or employment benefits in exchange for sexual favors; making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose; or making or threatening reprisals after a negative response to sexual advances.

C. Sexual Misconduct

The College prohibits the following specific conduct: (1) *Sexual Assault*; (2) *Non-Consensual Sexual Contact*; (3) *Sexual Exploitation*; and (4) *Stalking*.

Each of these is explained in detail below. The College recognizes that other Prohibited Conduct, including (but not limited to) Intimate Partner Violence and Retaliation, may refer to behavior which constitutes Sexual Misconduct. In instances where Prohibited Conduct constitutes a violation of more than one violation of the Policy, an individual may allege either or all violations of the Policy.

1. Sexual Assault

Sexual Assault is having or attempting to have sexual intercourse with another individual:

- By force or threat of force;
- Without effective affirmative consent; or
- When that individual is incapacitated.

Sexual assault refers to any sexual penetration (anal, oral, or vaginal), however slight, with any object, or sexual intercourse between two (2) or more parties without consent. Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger, or object or oral copulation by mouth to genital contact or genital to mouth contact.

2. Non-Consensual Sexual Contact

Non-Consensual Sexual Contact is having sexual contact with another individual:

- By force or threat of force;
- Without effective affirmative consent; or
- When that individual is incapacitated.

Non-Consensual Sexual Contact includes intentional contact with the intimate parts of another, causing an individual to touch their own intimate body parts, or disrobing or exposure of another without permission. Intimate body parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

3. Sexual Exploitation

Sexual Exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of Sexual Exploitation include, but are not limited to:

- surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all Parties involved;
- non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity of the person being exploited, or distribution of such without the knowledge and consent of all Parties involved;
- Prostitution (such as selling or exchanging sexual acts for money or something else of value or benefit).

- exposing one's genitals or inducing another to expose their own genitals in non- consensual circumstances;
- knowingly exposing another individual to a sexually transmitted disease or virus without their knowledge; and
- inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

4. *Stalking*

Stalking occurs when a person engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

A course of conduct consists of two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through third Parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Cyber-stalking is a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Examples of Stalking include, but are not limited to:

- Non-consensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on web sites, written letters, gifts, or any other communications that are undesired and/or place another person in fear;
- Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a person;
- Surveillance and other types of observation, whether by physical proximity or electronic means; and
- Gathering of information about a person from family, friends, co-workers, and/or classmates.

To qualify as stalking, the conduct is not required to be sexual in nature.

D. Intimate Partner Violence

Intimate Partner Violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, spousal, domestic, or other intimate relationship with the Respondent. The College will not tolerate Intimate Partner Violence of any form.

Intimate Partner Violence is often referred to as dating violence, domestic violence, or relationship violence. Intimate Partner Violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate Partner Violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner, or to the family members or friends of the sexual or romantic partner. Intimate Partner Violence affects individuals of all sexes, sexual orientations, gender identities, and gender expressions, races and social and economic backgrounds.

Dating Violence is causing or attempting to cause physical or sexual assault or abuse, placing another in reasonable fear of serious bodily injury, restraining another's liberty or freedom of movement, or stalking where such conduct is directed against the complainant by someone with whom he/she is or has been in a romantic or intimate relationship. Whether there was such a relationship will be gauged by its length, type, and frequency of interaction.

Domestic Violence is causing or attempting to cause physical or sexual assault or abuse, placing another in reasonable fear of serious bodily injury, restraining another's liberty or freedom of movement, or stalking, where such conduct is directed against the complainant by his/her current or former spouse or intimate partner or any other person from whom the complainant is protected under federal or state law.

E. Key Terms: Affirmative Consent, Force, Intimidation, Coercion, Incapacitation

1. Affirmative Consent

Under New York law, affirmative consent means: knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

2. *Force*

Force is the use or threat of physical violence to overcome an individual's freedom of will to choose whether or not to participate in sexual activity or provide consent. Consent obtained by force is not valid.

For the use of force to be demonstrated, there is no requirement that a Complainant resist the sexual advance or request. However, evidence of resistance by the Complainant will be viewed as a clear demonstration of a lack of consent.

3. *Intimidation*

Intimidation is the use of implied threats to overcome an individual's freedom of will to choose whether or not to participate in sexual activity or provide consent. Consent obtained by intimidation is not valid.

4. *Coercion*

Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against that individual's will. Consent obtained through coercion is not valid.

Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other Party does not engage in the sexual activity. When someone indicates, verbally or physically, that they do not want to engage in a particular sexual activity, that they want to stop a particular activity, or that they do not want to go past a certain point of sexual interaction, continued activity or pressure to continue beyond that point can be coercive. The College will evaluate the following in determining whether coercion was used: (a) the frequency of the application of

pressure, (b) the intensity of the pressure, (c) the degree of isolation of the person being pressured, and (4) the duration of the pressure.

5. Incapacitation

Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because of a lack of conscious understanding of the fact, nature, or extent of the act (e.g., to understand the who, what, when, where, why, or how of the sexual interaction) and/or is physically helpless. For example, an individual is incapacitated, and therefore unable to give consent, if the individual is asleep, unconscious, or otherwise unaware that sexual activity is occurring. An individual will also be considered incapacitated if the person cannot understand the nature of the activity or communicate due to a mental or physical condition.

Incapacitation may result from the use of alcohol, drugs, or other medication. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation.

The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual's: (1) decision-making ability; (2) awareness of consequences; (3) ability to make informed judgments; or (4) capacity to appreciate the nature and the quality of the act.

It shall not be a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances: (a) the Complainant was asleep or unconscious; (b) the Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity; (c) the Complainant was unable to communicate due to a mental or physical condition.

Whether the Respondent reasonably should have known that the Complainant was incapacitated will be evaluated using an objective reasonable person standard. The fact that the Respondent was actually unaware of the Complainant's incapacity is irrelevant to this analysis, particularly where the Respondent's failure to appreciate the Complainant's incapacitation resulted from the Respondent's failure to take reasonable steps to determine the Complainant's incapacitation or where the Respondent's own incapacitation (from alcohol or drugs) caused the Respondent to misjudge the Complainant's incapacity.

It is the responsibility of each Party to be aware of the intoxication level of the other Party before engaging in sexual activity. In general, sexual activity while under the influence of alcohol or other drugs poses a risk to all Parties. If there is any doubt as to the level or extent of the other individual's intoxication, it is safest to forgo or cease any sexual contact or activity.

Being intoxicated by drugs or alcohol is no defense to any violation of this Policy and does not diminish one's responsibility to obtain consent.

F. Proscribed Relationships by Persons in Authority

Sexual or other intimate relationships in which one Party maintains — and fails to promptly report and discontinue — a direct supervisory or evaluative role over the other Party are prohibited. In general, this includes all sexual or other intimate relationships between students and their employers, supervisors, professors, coaches, advisors, or other College employees. Similarly, College employees (faculty and staff) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under the employee's direct supervision.

The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. However, faculty, administrators, and others who educate, supervise, evaluate, employ, counsel, coach, or otherwise guide students should understand the fundamentally asymmetrical nature of the relationship they have with students, employees (as applicable), or subordinates. Intimate or sexual relationships where there is a differential in power or authority produce risks for every member of our community and undermine the professionalism of faculty and supervisors. In either context, the unequal position of the Parties presents an inherent element of risk and may raise sexual harassment concerns if one person in the relationship has the actual or apparent authority to supervise, evaluate, counsel, coach, or otherwise make decisions or recommendations as to the other person in connection with their employment or education at the College.

Sexual relations between persons occupying asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third Parties based on perceived or actual favoritism or special treatment based on the relationship.

The College has adopted a policy that balances, on the one hand, its wish not to interfere with the private choices of its community members and, on the other hand, concerns regarding relationships in which one Party maintains a direct supervisory or evaluative role over the other Party. Specifically, if an individual contemplates beginning, or is involved in, a sexual or other intimate relationship with another, over whom the individual holds direct supervisory or evaluative responsibilities, the individual must promptly: (1) discontinue any supervising role or relationship over the other person; and (2) report the circumstances to their own supervisor or the VP of Academic Affairs (Faculty) and Human Resources. Failure to fully or timely comply with these requirements is a violation of this Policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the College.

Any individual may file a complaint alleging harassment or discrimination, including third Parties outside the relationship directly affected by the perceived harassment or discrimination.

G. Retaliation

Retaliation includes adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this Policy. Adverse action includes conduct that threatens, intimidates, harasses, coerces or in any other way seeks to discourage a reasonable person from engaging in activity protected under this Policy. Retaliation can be committed by or against any individual or group of individuals, not just a Respondent or Complainant. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of Prohibited Conduct.

The College will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting Prohibited Conduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

Any covered person may pursue any charge of discrimination or harassment with the New York State Equal Employment Opportunity Commission or the federal Equal Opportunity Employment Commission (“EEOC”). It is unlawful to retaliate against any employee for opposing the practices prohibited by New York State Human Rights Law or comparable federal law or for filing a complaint with, or for otherwise participating in, an investigation, proceeding, or hearing conducted EEOC.

V. Privacy and Confidentiality

The College is committed to protecting the privacy of all individuals involved in the investigation and resolution of reports under this Policy. The College also is committed to assisting students, employees, and third Parties in making informed choices. With respect to any report under this Policy, the College will make reasonable efforts to protect the privacy of participants, in accordance with Article 129-B of the New York State Education Law, FERPA, and other applicable federal laws, while balancing the need to gather information to take steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. All College employees who are involved in the College’s Title IX response receive specific instruction about respecting and safeguarding private information.

Privacy and confidentiality have distinct meanings under this Policy.

A. Privacy

Privacy generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those College employees who “need to know” in order to assist in the active review,

investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process and for student parties subject to FERPA.

B. Confidentiality

Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These campus and community professionals include mental health providers, ordained clergy, and rape crisis counselors, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others

An individual who seeks completely confidential assistance may do so by speaking with professionals who have a legally protected confidentiality. On campus, confidential resources available to students include psychological counselors at the Counseling Center, licensed health care professionals in Wicker Wellness Center, and the Campus Minister in the Office for Religious & Spiritual Life. For staff and faculty, the EAP (Employee Assistance Program) offers confidential on or off campus support by calling: 1-800-828-6025. When a report involves suspected abuse of a minor under the age of 18, these confidential resources are required by state law to notify child protective services and/or local law enforcement.

An individual may also seek assistance from a medical provider. In general, the disclosure of private information contained in medical records is protected by New York State patient confidentiality laws.

VI. Title IX Coordinator

The College has a designated Title IX Coordinator. The Title IX Coordinator monitors the College's overall compliance with Title IX, ensures appropriate training and education, and oversees the College's investigation, response, and resolution of reports made under this Policy. Upon receiving reports of Prohibited Conduct, the Title IX Coordinator ensures that appropriate action is taken to eliminate that conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator is available to advise all individuals—including individuals who have experienced misconduct, individuals who are alleged to be responsible for misconduct, and third-parties — on this Policy and the appended Grievance Processes.

One should contact the Title IX Coordinator in order to:

- seek information or training about student, staff, and faculty rights and courses of action available to resolve reports or complaints that involve potential sex discrimination, including sexual misconduct,
- file a complaint or make a report of sex discrimination, including sexual misconduct,

- notify the College of an incident or policy or procedure that may raise potential Title IX concerns,
- get information about available resources (including confidential resources) and support services relating to sex discrimination, including sexual misconduct, and
- ask questions about the College's policies and procedures related to sex discrimination, including sexual misconduct.

The Title IX Coordinator's functions and responsibilities include:

- training for students, faculty, and employees of the College,
- assessing whether a report or complaint alleges conduct that may (more likely than not), upon investigation, constitute behavior that could be considered prohibited sexual misconduct,
- appointing an investigative team upon such determination,
- making certain that individual reports and complaints are handled properly and in a prompt and timely manner,
- informing all parties regarding the grievance process,
- confirming that all parties have been notified of grievance decisions and of the right to, and procedures for, appeal,
- monitoring compliance with timeframes specified in the grievance procedures,
- promptly taking steps to ensure interim or remedial measures are utilized as needed or requested,
- coordinating an annual climate survey, in consultation with research personnel with expertise in survey design and data collection and analysis,
- analyzing data collected by the annual climate survey to assess the rates and nature of sexual misconduct, any location hot-spots or risk factors, knowledge of the College's sexual misconduct policies, procedures and resources, and the consequences of violating such policies, and the effectiveness of the College's efforts to strive to ensure that the College is free from sexual misconduct,
- reviewing all reports and complaints raising potential Title IX issues throughout the College to ensure that the College responded consistent with its Title IX obligations, even if the report or complaint was initially filed or raised with another individual,
- reviewing all reports and complaints raising potential Title IX issues throughout the college to identify and address any patterns,
- reviewing the College's policies and procedures to strive to ensure that they comply with the requirements of Title IX and New York State Education Law Article 129-B,

- organizing and maintaining files related to grievances, reports, complaints, and other records of potential sex discrimination, including sexual misconduct, in a secure manner,
- assessing regularly the College’s compliance with, and the effectiveness of, policies and procedures related to sex harassment, sexual misconduct, and recommending modifications where appropriate,
- coordinating regularly with Campus Safety with respect to overlapping obligations related to sexual misconduct against students, including prevention, education, and training,
- consulting regularly with the College President and/or his/her designee and campus stakeholders to promote campus-wide awareness and discussion of Title IX-related issues, and develop and implement any modifications of policies and procedures to prevent and eliminate sex discrimination, including sexual misconduct, and
- ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating with local victim advocacy organizations and service providers, including rape crisis centers.

In addition, based on the relationship of the Complainant and/or the Respondent to the College, the Title IX Coordinator may be supported by the Associate Dean of Students, the Director of Campus Safety, the Dean of Faculty, and/or a representative from Human Resources. Collectively, the Title IX Coordinator and the individuals supporting the Coordinator are the “Title IX Team.” The Title IX Team is a small circle of individuals who have a “need to know” of any alleged Prohibited Conduct to effectuate this Policy. The following individual has been designated by Union College to serve at the Title IX Coordinator:

Dr. Melissa Kelley, Title IX Coordinator
403E Reamer Campus Center
518-388-6865
Kellevm2@union.edu
Union.edu/titleix

A. Deputy Title IX Coordinator – Athletics

If you have a sexual misconduct complaint against a Union College athlete, coach, or athletics’ administrator; or visiting student athlete, coach, athletic personnel or spectator; or you have a complaint of gender inequity in Union College’s athletic programs, you may contact the Senior Associate Director of the Athletic Department who will facilitate the handling of the complaint alongside the Title IX Coordinator. Union College has designated the following individual to serve as Deputy Title IX Coordinator for Athletics: Joanne Little, Senior Associate Director of Athletics, 618-388-6433, littlej@union.edu.

VII. Resources, Reporting, and Responsible Employees

The College is committed to treating all members of the community with dignity, care and respect. A student, staff, or faculty member who experiences or is affected by sexual misconduct, relationship violence, sexual harassment, or stalking whether as a complainant, a respondent, or a third party, will have equal access to support and counseling services through the College. Interim remedies are also available to all parties. The College has a strong interest in supporting survivors of sexual misconduct, relationship violence, sexual harassment, and stalking and encourages all individuals or third party witnesses to report any incident to the College.

The College recognizes that deciding whether or not to make a report, either to the College or law enforcement, and choosing how to proceed can be difficult decisions. Making a report means telling someone in authority what happened -- in person, by telephone, in writing or by email. At the time a report is made, a complainant does not have to decide whether or not to request any particular course of action, nor does a complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The College provides support that can assist each individual in making these important decisions, and to the extent legally possible will respect an individual's autonomy in deciding how to proceed. In this process, the College will balance the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the College community.

There are many resources available on campus and in the surrounding community. As detailed below, there are confidential resources which by law cannot share information without the consent of the individual seeking assistance. There are also a variety of College resources that will be discreet and private, but are not considered confidential. These resources will maintain the privacy of an individual's information within the limited circle of those involved in the resolution of a complaint under this policy. For more information about the difference between privacy and confidentiality, see Section V above.

The College encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual misconduct. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. The College will help any student, staff, or faculty member to get to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about on- and off-campus resources and options for resolution.

The College also strongly encourages all individuals to make a report to the College and to local law enforcement, although neither is required. These reporting options are not mutually exclusive. Both internal and criminal reports may be made simultaneously.

Any individual who reports sexual misconduct, relationship violence, sexual harassment, or stalking can be assured that all reports will be investigated and resolved in a fair and impartial manner. The complainant, respondent, and all individuals involved can expect to be treated with dignity and respect. In every report under this policy, the College will make an immediate assessment of any risk of harm to the complainant or to the broader campus community and will take steps necessary to address those risks. These steps will include interim measures to provide for the safety of the individual and the campus community.

A. Confidential Resources

The College encourages all community members to make a prompt report of any incident of sexual misconduct, relationship violence, sexual harassment, or stalking to local law enforcement and the College. For individuals who are not prepared to make a report, or who may be unsure what happened, but are still seeking information and support, there are several legally-protected confidential resources available as designated below. These confidential resources will not share information with the College or anyone else without the individual's permission.

STUDENTS' CONFIDENTIAL CAMPUS RESOURCES

Sexual Assault Resource Hotline	518-388-6600
Counseling Center-Wicker Wellness Center	518-388-6161
Health Services-Wicker Wellness Center	518-388-6120
Campus Minister	518-388-6618

EMPLOYEES' CONFIDENTIAL CAMPUS RESOURCES

Employee Assistance Program (EAP)	1-800-828-6025
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CONFIDENTIAL OFF CAMPUS (LOCAL) RESOURCES (Students & Employees)

Sexual Assault & Crime Victims Services	518-346-2266
Schenectady YWCA Domestic Violence Hotline	518-374-3386

B. Confidential Medical Resources

A medical provider can provide emergency and/or follow-up medical services. The medical exam, referred to as a SANE (sexual assault nurse examiner) or forensic exam, has two goals: first, to diagnose and treat the full extent of any injury or physical effect (including prevention of sexually transmitted illnesses and pregnancy) and second, to properly collect and preserve evidence. There is a limited window of time (typically within 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any particular course of action. The decision to seek timely medical attention and gather any evidence, however, will preserve the full range of options to seek resolution under this policy or through the pursuit of criminal prosecution.

On campus, Wicker Wellness Center can provide medical care to students; however, Wicker is not equipped for forensic/SANE examinations or able to provide services to staff and faculty. Members of the Union community are welcome to seek medical services wherever they are most comfortable. Below are two options for seeking a SANE exam nearby to campus.

EMERGENCY MEDICAL SERVICES NEAR CAMPUS PROVIDING SANE EXAMINATIONS

Ellis Hospital Emergency Department, 1101 Nott Street, Schenectady	518-243-4121
Ellis Emergent Care Center, 103 Sitterly Road, Clifton Park	518-579-2800

C. Additional Campus Resources

In addition to the confidential resources listed above, Union College community members have access to a variety of resources provided by the College. The staff members listed below are trained to support individuals affected by sexual harassment or misconduct and to coordinate with the Title IX Coordinator consistent with the College’s commitment to a safe and healthy educational environment. While not bound by confidentiality, these resources will maintain the privacy of an individual’s information within the limited circle of those involved in the Title IX resolution process.

CAMPUS RESOURCES	
Melissa Kelley, Title IX Coordinator 403E Reamer Campus Center Union.edu/titleix	518-388-6865 KelleyM2@union.edu
Campus Safety College Park Hall Union.edu/safety	518-388-6911 Campussafety@union.edu
Dean of Students 306 Reamer Campus Center Union.edu/dean	518-388-6116 Dos_office@union.edu
Human Resources 17 South Lane Union.edu/hr	518-388-6108 hr@union.edu
Dean of Faculty – Strom Thacker Feigenbaum Hall	518-388-6102 thackers@union.edu
Dean of Diversity and Inclusion – Gretchel Hathaway Feigenbaum Hall	518-388-8327 hathawag@union.edu

D. Emergency Reporting Options

Complainants have the right to notify or decline to notify law enforcement. The College strongly encourages all individuals to seek assistance from law enforcement immediately after an incident of sexual misconduct, intimate partner violence, or any other prohibited conduct. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. Police have unique legal authority, including the power to seek and execute search warrants, collect forensic evidence, make arrests, and assist in seeking emergency protective orders. The College will help any Union community member to get to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about on- and off-campus resources and options for resolution.

EMERGENCY CONTACT INFORMATION

New York State Police, Sexual Assault Victims Unit
Schenectady Police Department, 531 Liberty Street, Schenectady
Campus Safety (On Campus Emergencies)

1-844-845-7269
911 or 518-382-5200
518-388-6911

E. Campus Reporting Options/Responsible Employees

The College encourages all students, staff, and faculty to report misconduct to College staff members listed above or a College employee whom the complainant trusts and feels comfortable with. In general, most College employees do not have legally protected confidentiality. Under Title IX, a College is required to take immediate and corrective action if a Responsible Employee knew or, in the exercise of reasonable care, should have known about sexual misconduct, relationship violence, sexual harassment, or stalking.

A Responsible Employee includes any employee who:

- Has the authority to take action to redress the harassment;
- Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
- A student could reasonably believe has the authority or responsibility to take action.

Using this lens, employees with supervisory and leadership responsibilities on campus are considered Responsible Employees. This includes, for example, faculty, coaches, administrators, Resident Directors, and Resident Advisors.

The College requires that all Responsible Employees share a report of misconduct with the Title IX Coordinator or the Director of Campus Safety. The Title IX Coordinator or the Director of Campus Safety will notify the Senior Associate Dean of Students or appropriate administrator. The Title IX Coordinator will lead the Title IX Team, where membership may vary depending on whether the involved parties are students, faculty, and/or staff.

A student, staff, or faculty member may desire to report prohibited conduct to the College but to maintain confidentiality; if so, the Title IX Coordinator will evaluate such requests. Where a Complainant requests that the Complainant's name or other identifiable information not be shared with the Respondent or that no formal action be taken, the Title IX Coordinator, in conjunction with the Title IX team, will balance the Complainant's request with its dual obligation to provide a safe and non-discriminatory environment for all College community members and to remain true to principles of fundamental fairness that ordinarily provide for notice and an opportunity to respond before action is taken against a Respondent. In making this determination, the College may consider the seriousness of the conduct, the respective ages and roles of the Complainant and Respondent, whether there have been other complaints or reports of harassment or misconduct against the Respondent, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought.

The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the College is unable to take action consistent with the request of the Complainant, the Title IX Coordinator or a member of the Title IX team will inform the Complainant about the chosen course of action, which may include the College seeking disciplinary action against a Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

For more information about the role of Responsible Employees, see the Title IX Website, www.union.edu/titleix for a FAQ document addressing the responsibilities associated with this designation.

F. Anonymous Reporting

Any individual may make an anonymous report concerning an act of sexual misconduct, relationship violence, sexual harassment, or stalking. An individual may report the incident without disclosing his/her name, identifying the respondent or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, the College's ability to respond to an anonymous report may be limited. The Anonymous Reporting Form can be found at:

https://cm.maxient.com/reportingform.php?UnionCollege&layout_id=9

The form must be submitted to Campus Safety or the Title IX Coordinator who will determine any appropriate steps, including individual or community remedies as appropriate, and in consultation with the Director of Campus Safety, compliance with all Clery Act obligations.

G. Reporting to External Agencies

In addition to reporting to law enforcement or the College, students, faculty, and staff should be aware of the following external governmental agencies that investigate and prosecute complaints of prohibited discrimination and harassment:

- Title IX Compliance. Inquiries or complaints concerning the College's compliance with Title IX may be referred to the U.S. Department of Education's Office for Civil Rights, 1 (800) 368-1019.
- Employment Discrimination or Harassment. Any employee may pursue any charge of discrimination or harassment with the New York Division of Human Rights, (518) 474-2705 or with the US Equal Opportunity Commission, 1 (800) 669-4000.

H. Other Reporting Considerations

1. Timeliness and Location of Incident

Complainants and third-party witnesses are encouraged to report sexual misconduct, relationship violence, sexual harassment, and stalking as soon as possible in order to maximize the College's ability to respond promptly and effectively. The College does not, however, limit the time frame for reporting. If the respondent is not a member of the Union College community, the College will still seek to meet its Title IX obligation by taking steps to end the sexual misconduct, relationship violence, sexual harassment, or stalking, prevent its recurrence, and address its effects, but its ability to take disciplinary action against the respondent is limited.

An incident does not have to occur on campus to be reported to the College. Off-campus conduct that is likely to have a substantial effect on the complainant's on-campus life and activities or poses a threat or danger to members of the Union College community may also be addressed under this policy.

2. Amnesty for Alcohol or Other Drug Use for Students

The health and safety of every student at Union College is of utmost importance. The College recognizes that students who have been drinking alcohol and/or using other drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to sexual misconduct, relationship violence, sexual harassment, or stalking occurs may be hesitant to report such incidents due to fear of potential consequences for their conduct. Union College strongly encourages students to report sexual misconduct, relationship violence, sexual harassment, or stalking to College officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of sexual misconduct, relationship violence, sexual harassment, or stalking to College officials or law enforcement will not be subject to Union College's Code of Conduct action for violations of alcohol and/or other drug use policies occurring at or near the time of the commission of sexual misconduct, relationship violence, sexual harassment, or stalking.

3. False Reports

The College will not tolerate intentional false reporting of incidents. The College takes the accuracy of information very seriously as a charge of sexual misconduct, relationship violence, sexual harassment, or stalking may have severe consequences. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of sexual misconduct. However, when a complainant or third party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the complainant or third party witness may be subject to disciplinary action. It is a violation of the Code of Student Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws

4. Take Back the Night and Other Public Awareness Events

Consistent with guidance from the Office for Civil Rights of the Department of Education, public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, or other forums in which community members disclose incidents of Prohibited Conduct do not initiate the College’s Title IX obligations, including its obligation to investigate reports of sexual harassment or sexual violence. Such events may, however, inform the need for campus-wide educational and prevention efforts, and the College may implement broad community initiatives in response to such events where appropriate.

VIII. Timely Warning, Coordination with Law Enforcement, Initial Title IX Assessment, and Requests for Confidentiality

A. Timely Warning

If a report of misconduct discloses a serious or continuing threat to the Union College community, the College may issue a campus wide timely warning (which can take the form of an email to campus) to protect the health or safety of the community. The timely warning will not include identifying information about the complainant. Even where there is no imminent threat, the College may send campus-wide e-mail notifications on all reported sexual misconduct.

At no time will the College release the name of the complainant to the general public without the express consent of the complainant. The release of the respondent’s name, if a student, to the general public is guided by Family Educational Rights and Privacy Act (FERPA) and the Clery Act.

All College proceedings are conducted in good faith compliance with the requirements of FERPA, the Clery Act, Title IX, Article 129-B of the New York State Education Law, and other federal laws. No information shall be released from such proceedings except as required or permitted by law and College policy.

B. Coordination with Law Enforcement

Upon receipt of a report, Campus Safety will comply with any legal requirements to notify local law enforcement if a violent felony is suspected to have occurred. To the fullest extent permitted by law, the identity of the complainant will not be disclosed without his/her express permission being given. Physical evidence must be properly documented and stored by local law enforcement to maintain the ability for it to be presented as evidence and used in a legal case if a complaint is filed by the complainant with local law enforcement.

Information regarding Campus Safety’s Emergency Response Protocol can be found at: <http://www.union.edu/offices/safety/>

The College encourages complainants to pursue criminal action for incidents of sexual misconduct, relationship violence, sexual harassment, and stalking that may also be crimes under New York law. The College, through Campus Safety, will assist a complainant in making a criminal report and cooperate with law enforcement agencies if the complainant decides to pursue the criminal process to the extent permitted by law.

The College's Sexual Misconduct Policy may contain provisions, including definitions, burden of proof, and standards that differ from New York criminal law. A Complainant may seek recourse under this policy and/or pursue criminal action. Neither law enforcement's determination whether or not to prosecute a respondent nor the outcome of any criminal prosecution are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

At the request of law enforcement, the College may agree to defer its Title IX fact-gathering until after the initial stages of a criminal investigation, but the College is not obligated to make such deferral. The College will nevertheless communicate with the complainant regarding Title IX rights, procedural options, and the implementation of interim measures to assure safety and well-being. If the College defers its Title IX fact-gathering, the College will promptly resume its Title IX fact gathering as soon as it is informed that law enforcement has completed its initial investigation or once it decides to stop deferring fact-gathering during a criminal investigation.

C. Initial Title IX Assessment

Upon receipt of a report, the College, through the coordinated efforts of the Title IX Team. The Title IX Team may include the Senior Associate Dean of Students, the Director of Campus Safety, the Dean of Faculty or designee, and/or a representative from Human Resources. Collectively, the Title IX Coordinator and the individuals supporting the Coordinator are defined as the "Title IX Team." The Title IX Team is a small circle of individuals who have a "need to know" of any alleged prohibited conduct to effectuate this Policy. The Title IX Team will conduct an initial Title IX assessment.

The first step of the assessment will usually be a preliminary meeting between the complainant and the Title IX Team. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full forensic interview. At this meeting, the complainant will be provided with information about resources, procedural options and interim remedies.

As part of the initial assessment of the report, the Title IX team will:

- Assess the nature and circumstances of the allegation.
- Address immediate physical safety and emotional well-being needs.
- Notify the complainant of his/her right to contact law enforcement and seek medical treatment, including the importance of preservation of evidence.

- Enter the report into the College’s daily crime log.
- Provide the complainant with information about:
 - On- and off-campus resources including intervention, mental health counseling, and medical services, which shall include information on whether such resources are available at no cost or for a fee.
 - Sexually transmitted infections, sexual assault forensic examinations, and resources available through the New York State Office of Victim Services (found at <https://ovs.ny.gov/>)
 - The range of interim accommodations and remedies.
 - An explanation of the procedural options, including Informal Resolution and Formal Resolution and the process for filing a Formal Complaint or Grievance
- Assess for pattern evidence or other similar conduct by respondent.
- Discuss the complainant’s expressed preference for manner of resolution and any barriers to proceeding.
- Explain the College’s policy prohibiting retaliation.

This initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made. Thereafter, an investigation may continue depending on a variety of factors, such as the complainant’s wish to pursue disciplinary action (Formal Complaint), the complainant’s request to maintain confidentiality, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation.

If the complainant elects to file a disciplinary or Formal Complaint, a complainant’s Statement, in addition to other forms, is required to initiate the action.

At the conclusion of the Title IX assessment, the Title IX Team will determine the appropriate manner of resolution and, if appropriate, refer the report for further Investigation, Informal Resolution or Formal Resolution.

The determination/recommendation as to how to proceed will be communicated to the complainant in writing. Depending on the circumstances and requested resolution, the respondent may or may not be notified of the report or resolution. A respondent will be notified when the College seeks action that would impact a respondent, such as protective measures that restrict his/her movement on campus, the initiation of an investigation after the initial assessment or the decision to involve the respondent in Informal Resolution.

D. Interim Suspension - Students

An interim suspension of the respondent may be imposed only by the Dean of Students (or designee) and shall become effective immediately without prior notice whenever there is evidence that the continued presence of the respondent poses a substantial and continuing threat to the complainant or to the College community. The complainant may submit evidence supporting an interim suspension. Should an interim suspension be issued and resolution of the matter that prompted it is not resolved within **two (2) weeks**, the interim suspension may convert to an administrative leave of absence. The College may notify parent(s) or legal guardian(s) of dependent students or students under eighteen (18) years of age of the interim suspension and, when applicable, of any alternative housing arrangements. Additionally, in accordance with Article 129-B, Section 6444, Subsection 4(f), when an interim suspension is imposed, the respondent is entitled to a prompt review of the need for, and terms of, an interim suspension, including a potential modification and shall be allowed to submit evidence to support his/her request.

E. Request for Confidentiality

When a complainant requests that his/her name or other identifiable information not be shared with the respondent or that no formal action be taken, the Title IX Team will balance this request with its dual obligation to provide a safe and non-discriminatory environment for all College community members and to remain true to principles of fundamental fairness that require notice and an opportunity to respond before action is taken against a respondent. In making this determination, the College may consider the following factors, including but not limited to:

- Whether the respondent has a history of violent behavior or is a repeat offender.
- Whether the incident represents an escalation in unlawful conduct on behalf of the respondent from previously noted behavior.
- The increased risk that the respondent will commit additional acts of violence.
- Whether the respondent used a weapon or force.
- Whether the complainant is a minor.
- Whether the College possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the complainant. Where the College is unable to take action consistent with the request of the complainant, a member of the Title IX Team will inform the complainant about the chosen course of action, which may include the College seeking disciplinary action against a respondent. Alternatively, the course of action may also include steps to limit the effects of the

alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a respondent or revealing the identity of the complainant.

IX. Interim Measures, Remedies, and Accommodations

Upon receipt of a report, the College will impose reasonable and appropriate interim measures designed to eliminate the hostile environment and protect the parties involved. The College will make reasonable efforts to communicate with the parties to ensure that all safety, emotional and physical well-being concerns are being addressed. Interim measures may be imposed regardless of whether formal disciplinary action is sought by the Complainant or the College.

A complainant or respondent may request a No Contact Order or other protection, or the College may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader College community and/or the integrity of the process.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure.

The respondent and the complainant, upon written request to the Title IX Team, shall have the right to:

- request a review of the need for, and terms of, interim measures including No Contact Orders which were imposed in accordance with the Sexual Misconduct Policy; and/or
- request modifications to the terms of the interim measures.

The respondent and the complainant shall be allowed to submit evidence in support of their request. The request must be initiated within five (5) days of the imposition of the interim measures.

The Title IX Team shall review the request and supporting evidence, if submitted, promptly. A decision will be issued within three (3) days of receipt of the written request. The decision is final.

A. Range of Measures

Interim measures will be implemented at the discretion of the College. Potential remedies, which may be applied to the complainant and/or the respondent, include:

- Access to counseling services and assistance in setting up initial appointment, both on and off campus.
- Imposition of campus “No Contact Order.”
- Rescheduling of exams and assignments (in conjunction with appropriate faculty).

- Providing alternative course completion options (with the agreement of the appropriate faculty).
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sections (with the agreement of the appropriate faculty and/or Dean of Studies).
- Change in work schedule or job assignment (with the agreement of the Chief of Human Resources and/or responsible Vice President).
- Change in on-campus housing.
- Arranging to dissolve a housing contract and pro-rating a refund in accordance with campus housing policies.
- Assistance from College support staff in completing housing relocation for students.
- Limit an individual or organization’s access to certain College facilities or activities pending resolution of the matter.
- Voluntary leave of absence.
- Providing an escort to ensure safe movement between classes and activities.
- Providing student medical services.
- Providing academic support services.
- Interim suspension or College-imposed leave.
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.
- To seek an Order of Protection from a court of competent jurisdiction; the College will enforce the order of protection, once notified by the complainant of its existence and terms, or request local law enforcement to make an arrest.

B. No Contact Order

In cases involving allegations of sexual misconduct, relationship violence, sexual harassment, or stalking, the appropriate Dean(or designee), Administrator, or the Title IX Coordinator, regardless of whether the complainant wishes to pursue a formal or informal resolution or no resolution, shall afford each party (the complainant and respondent) the opportunity to request a No Contact Order. Each request shall be reviewed promptly. Additionally, a No Contact Order may be issued upon notification of a report of sexual misconduct, relationship violence, sexual harassment, or stalking if appropriate to do so in the judgment of the appropriate Dean (or designee), administrator, or the Title IX Coordinator, subject to the parties’ rights set forth above under paragraph IX.

A No Contact Order typically will include a directive that the complainant and respondent refrain from having contact with one another, directly or through third parties, whether in

person or via electronic means, pending the investigation and resolution of the matter. If the complainant and respondent observe each other in common College facilities (such as Reamer Dining, parking areas, Schaffer Library, and athletic facilities), it shall be the responsibility of the respondent to leave the area immediately and without directly contacting the complainant. The No Contact Order may establish a schedule for the complainant and respondent to access applicable buildings and properties when the complainant is not accessing the same. The Dean (or designee), administrator, or Title IX Coordinator shall make the No Contact Order available to the complainant and respondent as soon as it is issued.

In the event that the Title IX Team or Campus Safety is notified of a violation of the terms of a No Contact Order, the party in alleged violation of the No Contact Order shall be provided an opportunity to review the matter with the appropriate administrator. If the Administrator, based upon the information available, decides by preponderance of evidence that the No Contact Order has been violated, the Administrator may elect to impose additional restrictions, discipline, or suspend the party temporarily pending the resolution of the underlying complaint. The Administrator may also take further protective action that he/she deems appropriate concerning the interaction of the parties pending the outcome of disciplinary action or adjudication process, if any, including without limitation asking the appropriate Dean (or designee) or administrator to alter the one's schedule and/or housing, if applicable.

X. Training and Prevention Programming

The College is committed to providing a safe and nondiscriminatory environment for all members of the College community. The College is equally committed to the prevention of prohibited conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming as part of their orientation, and returning students and current employees receive ongoing training and related programs. The College provides training to students, staff, and faculty members to ensure they understand the policy and the topics and issues related to maintaining an education and employment environment free from harassment and discrimination.

The College offers online and in-person training to students, staff, and faculty to ensure they understand the policy, including how to report incidents of prohibited conduct, and how to access confidential sources following an incident of prohibited conduct. Topics include Title IX and what constitutes prohibited conduct under the policy; the definition of affirmative consent, including examples; how the College analyzes whether conduct was unwelcome and the existence of a hostile environment for purposes of sexual or gender-based harassment; options for reporting prohibited conduct; the availability of confidential sources, on and off grounds; the College's resolution options for pursuing complaints under the policy; the potential sanctions for violating the policy; effects of trauma, including neurobiological changes; the role alcohol and drugs often play in incidents of prohibited conduct, including the deliberate use of alcohol and/or other drugs to perpetrate sexual assault; strategies and skills for bystanders to intervene to prevent sexual, gender-based, and other forms of interpersonal violence; how to report prohibited conduct to

Campus Safety or local law enforcement and the ability to pursue, simultaneously, a disciplinary and criminal complaint; and the protection against retaliation afforded by the policy.

For information about the training and programming available on campus, please contact the Title IX Coordinator.