

## **POLICY AGAINST PROHIBITED DISCRIMINATION, HARASSMENT, RETALIATION, AND BIAS ACTIVITY (August 2013)**

### **Policy Statement**

Union College prohibits its faculty, administrators, staff, and students from engaging in any form of prohibited discrimination or harassment, and expects these individuals to refrain from committing acts of bias within the College's jurisdiction. The College also prohibits retaliation. Retaliation includes any conduct, whether or not workplace or employment-related, directed at someone because he or she opposed a discriminatory practice, made a complaint of discrimination, or participated in such an investigation, which might deter a reasonable person from making or supporting a charge of harassment or discrimination. In compliance with applicable federal, state, and local legislation, the College maintains processes to provide redress and remediation to individuals who believe they have been the victims of these acts. The College further identifies Title IX coordinators who oversee all Title IX complaints and take steps to identify and address any patterns or systemic problems that arise during the review of such complaints. Members of the College community who have relevant information must cooperate with the College's investigations into prohibited discrimination, harassment, bias activity or retaliation.

### **Overview**

Union College's commitment to diversity and inclusiveness is grounded in providing an environment that is free from all prohibited discrimination, harassment, bias activity and retaliation. Union's commitment is intended to prevent negative actions that are directed at a member or group of the Union community because of that individual's or group's actual or perceived age, color, creed, disability, ethnicity, gender, gender identity or expression, marital status, national origin, race, religion, sexual orientation, military status, genetic predisposition, domestic violence victim status and any other factors prohibited by applicable law.

Acts of prohibited discrimination, harassment, and retaliation constitute violations of federal and state law. Although bias activity may not rise to the level of a federal violation, it is prohibited by state law. Union College equally condemns such activity and aims to respond to such incidents when they occur.

Accordingly, this policy prohibits all members of the College community from engaging in such prohibited discrimination, harassment, bias activity and retaliation, and sets forth an internal grievance process for presenting and responding to discrimination-related complaints, harassment complaints, reports of bias activity, and allegations of retaliation.

## **PROHIBITED DISCRIMINATION**

Prohibited discrimination occurs when an employment or academic decision results in negative and/or different treatment of an individual based upon his or her race, color, sex (including pregnancy), religion, creed, national origin (including ancestry), citizenship status, physical or mental disability (including AIDS), age, marital status, sexual orientation, gender identity and expression, military status, genetic predisposition, domestic violence victim status or any other protected category under applicable local, state, or federal law. Discriminatory conduct includes decisions in which the protected class status was the sole or a contributing factor.

The College encourages students and employees to report any perceived discrimination immediately using the procedures set forth in the College's Grievance Procedures to Address Allegations of Prohibited Discrimination, Harassment, and Retaliation.

## **PROHIBITED HARASSMENT**

This policy prohibits any form of unlawful harassment, by any member or group of the community, including harassment that creates a hostile environment against any employee or student because of race, color, sex, pregnancy, religion, creed, national origin (including ancestry), citizenship status, physical or mental disability (including AIDS), age, marital status, sexual orientation, gender identity and expression, military status, genetic predisposition, domestic violence victim status, or any other protected category under applicable local, state, or federal law. Prohibited harassment consists of unwelcome verbal, visual or physical conduct based on an individual's protected status where (1) an individual's acceptance or rejection of such conduct explicitly or implicitly forms the basis for an employment or educational decision affecting the individual; or (2) the conduct is sufficiently severe or pervasive so as to alter the terms, conditions, or privileges of the employee's employment or education, or otherwise create a hostile work or educational environment.

Union College is also committed to the free and vigorous discussion of ideas and issues, which the College believes will be protected by this policy. 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 the expression of ideas, however controversial, in the classroom, residence hall, and in keeping with different responsibilities, in workplaces elsewhere in the College community.

This policy applies to all persons who are enrolled or employed at Union College, whether they are on College property, are participating in a College-sponsored activity off-campus, or are otherwise interacting with co-workers or students off campus. The grievance procedures, described below, apply to situations in which both complainant and accused are enrolled or employed at Union College.

Situations which involve others, including applicants for admission or employment who believe they have been harassed by employees of Union College and employees of Union College who believe they have been harassed by contractors or vendors serving the College, will also be resolved through these procedures. Supervisors, Department Chairs, Deans, Faculty members, and individuals holding similar positions at Union College with knowledge of situations in which harassment may exist shall take appropriate steps to deal with the matter according to College policy and procedures.

Once there is knowledge of harassing behavior, the College is effectively on notice. If, after consultation with the Senior Director of Campus Diversity and Affirmative Action, the

Complainant does not wish to pursue the complaint further, the College may still need to respond by taking reasonable appropriate action, including conducting an investigation.

This policy and the grievance procedures for resolution of claims of harassment are only part of Union College's effort to prevent harassment in our community. In addition to spelling out steps for making and resolving complaints, the College will also endeavor to provide programs to raise the level of understanding concerning the nature of harassment and ways to prevent its occurrence.

### **Definition Of Sexual Harassment**

Sexual harassment is unwanted sexual advances, requests for sexual favors, and other gender-based verbal, visual or physical conduct when such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or education insofar as:

— Submission to or rejection of such conduct by an individual is used as the basis for affecting decisions about that individual's academic or employment future or for affecting participation in a College activity; or

— Such conduct has the purpose or effect of interfering with an individual's academic or professional performance or creating an intimidating hostile or demeaning employment or education environment.

Examples of conduct that may constitute sexual harassment include but are not limited to: abusive, or lewd language and/or suggestive jokes of a sexual nature; demands for sexual favors in exchange for other considerations; unwanted physical or verbal pursuit with a sexual theme (this includes repeated, unwelcome requests for dates); leering, suggestive, or insulting sounds and gestures; distributing, displaying, or discussing written or graphic material (e.g., calendars, posters, cartoons, websites) that are sexually suggestive or shows gender-based hostility; content in letters, notes, e-mail, or postings on social media sites that is sexual in nature, unwanted touching, brushing, patting, pinching, or attention to one's body; threats of, or deliberate, sexual assault or molestation. It is unlawful for males to sexually harass females or other males and for females to sexually harass males or other females.

### **Other Prohibited Harassment**

Prohibited harassment on the basis of race, color, sex (including pregnancy), religion, creed, national origin (including ancestry), citizenship status, physical or mental disability (including AIDS), age, marital status, sexual orientation, gender identity and expression, military status, genetic predisposition, domestic violence victim status, or any other protected category under applicable local, state, or federal law includes behavior similar to sexual harassment such as:

- Epithets, derogatory slurs, off-color jokes, threats, or suggestive or insulting sounds;
- Derogatory posters, cartoons, drawings, emails, websites, and postings on social media;

and

- Assault, unwanted touching, or blocking normal movement.

### **The Complaint Process**

The College's complaint procedure provides for a prompt, thorough, and objective investigation of any claim of prohibited harassment, appropriate disciplinary action against those found to have engaged in prohibited harassment, and appropriate remedies for any victim of harassment. Employees are strongly urged to use the College's complaint procedure, set forth below under Grievance Procedures to Address Allegations of Prohibited Discrimination, Harassment, and Retaliation.

### **Determination Of Prohibited Harassment**

The conduct alleged to constitute harassment under this policy shall be evaluated from the perspective of a reasonable person, considering all the circumstances, including the nature, frequency, intensity, location, context, and duration of the behavior in question.

In considering a complaint under this policy, the following understandings shall apply:

- Prohibited harassment must be distinguished from behavior which, even though unpleasant or disconcerting, is appropriate to the carrying out of certain instructional, advisory, or supervisory responsibilities.

- Instructional responsibilities require appropriate latitude for pedagogical decisions concerning the topics discussed and methods used to draw students into discussion and full participation.

## **RETALIATION**

The College will not tolerate retaliation of any kind against anyone who opposes a discriminatory practice, makes a good faith complaint about harassment and/or discrimination, or furnishes information or participates in any manner in an investigation of such a complaint. Retaliation includes any conduct, whether or not workplace or employment-related, directed at someone because he or she opposed a discriminatory practice, made a complaint of discrimination, or participated in such an investigation, which might deter a reasonable worker from making or supporting a charge of harassment or discrimination. Retaliation is unlawful and will not be tolerated. Any individual who believes that he or she has been subject to retaliation should file a complaint using the College's complaint procedure, set forth below under Grievance Procedures to Address Allegations of Prohibited Discrimination, Harassment, and Retaliation.

### **Social Media and Networking**

Although the College respects the right of students and employees to use social networking sites and similar forms of electronic expression, any such use of electronic expression to harass or discriminate is unlawful and prohibited by this policy as well as the College's Use of IT Resources Policy.

## **GRIEVANCE PROCEDURES TO ADDRESS ALLEGATIONS OF PROHIBITED DISCRIMINATION, HARASSMENT, AND RETALIATION**

Union College ("Union") has adopted an internal process to provide for the prompt and fair resolution of complaints alleging a violation of Union's non-discrimination policy, policy against unlawful harassment, and policy against retaliation. These procedures cover allegations of unlawful discrimination and harassment in employment on the basis of race, color, sex (including pregnancy), religion, creed, national origin (including ancestry), citizenship status, physical or mental disability (including AIDS), age, marital status, sexual orientation, gender identity and expression, military status, genetic predisposition, domestic violence victim status or any other protected category under applicable local, state, or federal law. These procedures also cover allegations of retaliation. Retaliation includes any conduct, whether or not workplace or employment-related, directed at someone because he or she opposed a discriminatory practice, made a complaint of discrimination, or participated in such an investigation, which might deter a reasonable person from making or supporting a charge of harassment or discrimination. Union encourages any employee who believes that he or she has experienced unlawful discrimination, harassment or retaliation (the "Complainant") to attempt to resolve the issue informally. To this end, employees may bring their concerns to the co-worker directly involved, the immediate supervisor, or department head.

If the Complainant remains dissatisfied with the resolution of his/her concerns after attempting to resolve them informally or if the Complainant does not feel comfortable attempting to resolve them informally, the Complainant should report the behavior immediately to their immediate supervisor, Department Head, or the Office of Diversity and Affirmative Action (located in Feigenbaum Hall, 1st Floor).

A complaint may be verbal or may be submitted in writing. It should include a description of the allegation(s) of discrimination, harassment and/or retaliation and should set forth specific facts in support of the allegation(s).

— A complaint should be made immediately. While reporting such incidents may be a difficult personal experience, allowing discrimination, harassment, or retaliation to continue will most certainly lead to less desirable outcomes. The College can only resolve those complaints of which it becomes aware, so employees are expected to promptly report complaints.

— Any supervisor or Department Head who becomes aware of possible discrimination, harassment, or retaliation (either through observation or through a report) must immediately notify the Office of Diversity and Affirmative Action.

— A fact finding investigation, as may be appropriate, shall be conducted by the Senior Director of Campus Diversity and Affirmative Action or at his/her direction promptly following receipt of the complaint. This process affords the Complainant and the person(s) against whom the allegation(s) of discrimination, harassment or retaliation have been made an opportunity to submit information and documentation regarding the complaint allegations.

— The fact finding investigation will be completed within thirty (30) working days from the time the investigation commences and the fact finder will provide a written report to the Senior Director of Campus Diversity and Affirmative Action. Within ten (10) working days from receipt of the report (or completion of the investigation by the Senior Director of Campus Diversity and Affirmative Action), the Senior Director of Campus Diversity and Affirmative Action will report the outcome of the investigation in writing to the Complainant and the Respondent. If the Senior Director of Campus Diversity and Affirmative Action determines that any of the allegations raised by the complaint warrant action, he or she will set forth what actions Union must take, including, for example, contacting the Vice President for Academic Affairs to initiate a disciplinary action against a Faculty member in accordance with the relevant provisions of the Faculty Manual (such as Section II, Article XIII Procedures for Dismissal and Sanctions), or contacting the Director of Human Resources in accordance with the Administrative and Staff Manuals, to address the substantiated concern(s), to the extent consistent with the confidentiality accorded to College personnel actions. NOTE: if a complaint that warrants action is directed against a member of the Senior Staff, the Senior Director of Campus Diversity and Affirmative Action shall notify the President for further action.

— At all times, the parties can entertain informal resolution options to resolve any issues. Union may suggest that the parties participate in a mediation program.

— Although Union will make reasonable efforts to comply with these timelines, circumstances such as College breaks, witness unavailability, and other factors may justify an extension to a time reasonable. If an extension of time is needed, the parties will be notified.

— It is a violation of these procedures to file a discrimination, harassment or retaliation complaint for the purpose of injuring the reputation or causing harm to another person. Without minimizing the injury that can be suffered by the Complainant, the College also recognizes that the filing of a discrimination or harassment complaint can have serious consequences for the person accused. That person, too, has rights that the policies on discrimination, harassment and retaliation must preserve and protect. Therefore, any person who abuses these procedures by knowingly filing a false complaint will be subject to discipline if the Senior Director of Campus Diversity and Affirmative Action determines that the complaint was filed in bad faith. This provision is not meant in any way to discourage legitimate complaints.

— Complainants, those accused, and witnesses who participate in these procedures are bound by rules of confidentiality. The Office of Diversity and Affirmative Action will preserve the confidentiality of information provided in connection with a grievance to the extent possible, consistent with the goals of prompt and thorough investigation and resolution as well as compliance with the law.

— If Complainant or the accused party wishes to appeal any aspect of the decision (for example, the decision to initiate disciplinary action in accordance with applicable provisions of the Faculty, Administrative, or Staff Manual), he or she may do so by filing a written notice with appropriate Vice President within ten (10) working days of the date of the decision. An appeal will be considered only if the party specifies with particularity the errors in the determination (such as inaccurate findings of fact or incorrect conclusions of law, the correction of which would change the outcome of the determination. Within forty-five (45) working days from the date of the filing of an appeal, the Vice President will uphold or modify the determination of the Senior Director of Campus Diversity and Affirmative Action. The Vice President’s decision is final.

## **BIAS ACTIVITY (INCLUDING BIAS INCIDENTS AND HATE CRIMES)**

Bias activity includes bias incidents as defined below and hate crimes as defined by law. Such activity is that which a reasonable person could conclude is directed at a member or group of the Union College community because of that individual’s or group’s actual or perceived attribute of diversity. Such incidents may not rise to the level of prohibited discrimination or harassment, but are prohibited by state and local law.

This policy covers the response of the Office of Diversity and Affirmative Action to bias activity that may occur at Union College. This Office will advise the College community of the occurrence of bias incidents and crimes, provide support-related resources to individuals who have experienced bias activity, and develop programs that will help to prevent or eliminate bias activity.

### **What Is A Bias-Related Crime?**

New York State Penal Law Section 485, also known as the “Hate Crimes Act of 2000,” sets forth the definition of a hate or bias-related crime. Specifically, a person commits a hate or bias-related crime when he or she commits a specified offense and either:

— intentionally selects the person against whom the offense is committed or intended to be committed, in whole or in substantial part, because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation of that person, regardless of whether the belief or perception is correct, or

— intentionally commits the act or acts constituting the offense, in whole or in substantial part, because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation of a person, regardless of whether the belief or perception is correct.

### **What Is A Bias-Related Incident?**

Bias-related incidents are defined as behavior that constitutes an expression of hostility against the person or property of another because of the targeted person or group’s actual or perceived race, color, national origin, ancestry, gender, religion, religious practice, age, disability, sexual

orientation, or gender identity or expression, but does not rise to the level of a hate crime. They include but are not limited to:

- spray-painting homophobic language in a public space of a residence hall
- yelling derogatory comments about women in the Campus Center
- hanging posters that mock persons with disabilities

## **GRIEVANCE PROCEDURE TO ADDRESS ALLEGATIONS OF BIAS ACTIVITY (INCLUDING BIAS INCIDENTS AND HATE CRIMES)**

### **Initiating A Report Of Bias Activity**

Faculty, administrators, and staff are encouraged to report bias activity, including hate crimes, either experienced directly or observed, that occur at the College or in the course of a College activity, to the Office of Diversity and Affirmative Action. Faculty, administrators, and staff are also encouraged to comply with the Senior Director of Diversity and Affirmative Action's requests and that Office's procedures for resolution. Reports may also be made to a Bias Incident Team member. Referral to the Bias Incident Team is appropriate even when the person believed to have committed the act cannot be identified or if the reporting person does not wish to pursue campus disciplinary or criminal charges. The Bias Reporting Team members include:

- Director of Campus Safety, Chris Hayen, at x6358 (518-388-6358) email: hayenc@union.edu
- Director of Counseling Center, Marcus Hotaling, at x6161 (518-388-6161) email: hotalinm@union.edu
- Director of Multicultural Affairs, Jason F. Benitez, at x6030 (518-388-6030) email: benitezj@union.edu
- Director of Human Resources, Eric Noll, at x6108 (518-388-6108) email: nolle@union.edu

Reports of Bias Activities that may also constitute prohibited discrimination, harassment, or retaliation must also be reported immediately to the Sr. Director of Campus Diversity and Affirmative Action for appropriate resolution pursuant to the College's Grievance Procedures to Address Allegations of Prohibited Discrimination, Harassment, and Retaliation.

### **Procedures For Responding To Bias-Related Incidents And Crimes**

The following procedures, to the extent reasonably practicable under the circumstances, are to be applied upon an incident occurring:

- Determine whether emergency medical treatment is necessary. If medical attention is necessary, immediately contact 911 and Campus Safety (388-6911 or 388-6178) for assistance.
- The Campus Safety Officer responding to the bias-related activity is to, if possible, photograph physical injuries, offensive graffiti, and evidence of vandalism. In addition, he or she should record where and when the activity occurred and document names of witnesses if applicable. Further, the Campus Safety Officer should document detailed information about the perpetrator(s), if available. He or she should also retain any physical evidence of the incident, if

possible, or, in the case of a crime, turn the incident over to public law enforcement officials. Any and all reports of this nature will be retained in the Dean of Students Office.

— Campus Safety Officers should also, if they suspect that a bias-related crime has occurred, report the crime to the appropriate law enforcement officials and cooperate with those officials in its investigation of the incident(s).

— All bias-related activity shall be considered confidential, to the extent permitted by law. Every reasonable effort will be made by Union College to preserve any personal information obtained during the investigation or adjudication of the matter. However, maintaining full confidentiality may be challenging in this context.

### **Support Services Available**

Affected members of the Union College community will be referred to support services and resources and may need support in order to cope with the incident and life in the aftermath.

### **Additionally, You Should Know**

Union prohibits retaliation against any person who files a complaint of a bias activity, participates in an investigation, or opposes an alleged bias activity.

It is a violation of these procedures to file a bias activity complaint for the purpose of injuring the reputation or causing harm to another person. Without minimizing the injury that can be suffered by the Complainant, the College also recognizes that the filing of a bias activity complaint can have serious consequences for the person accused. That person, too, has rights that must be preserved and protected. Therefore, any person who abuses these procedures by knowingly filing a false complaint will be subject to discipline if the Senior Director of Diversity and Affirmative Action determines that the complaint was filed in bad faith. This provision is not meant in any way to discourage legitimate complaints.