

FACULTY MANUAL

Section II

XIX. COLLEGE POLICY PROHIBITING HARASSMENT (March 2011)

A. Purpose and Definition

Union College's Harassment 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, status as a veteran, or any other protected category under applicable local, state, or federal law such as opposing discrimination or participating in any complaint process at the Equal Employment Opportunity Commission or other human rights agencies. A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent or pervasive so as to interfere significantly with an individual's work or education or affect adversely an individual's living conditions.

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. This policy is intended to complement Union College's Equal Opportunity Policy. Union College is committed to protecting the academic freedom and freedom of expression of all members of the College community. This policy against harassment 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.

The Harassment Policy applies to all persons who are enrolled or employed at Union College while they are on College property or are participating in a College-sponsored activity off-campus. The Procedures for Resolution of Claims of Harassment, described below, apply to situations in which both complainant and respondent 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 be resolved through procedures for complaints of discrimination. Persons who believe they have experienced these situations should contact the Director of Affirmative Action.

Union College has established informal and formal harassment grievance procedures that can be found in the Student Handbook, Faculty Manual, Administrators Manual or Staff Manual. Union College has also established a dispute resolution process for other forms of work related problems which can be found in the Faculty Manual, Administrators manual, or Staff Manual.

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 Director of 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.

The Harassment Policy and the 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.

B. Definition of Sexual Harassment

Sexual harassment is unwanted and repeated sexual, abusive, or lewd language and/or suggestive jokes of a sexual nature; demands for sexual favors in exchange for other considerations; unwanted and constant physical or verbal pursuit with a sexual theme; leering, suggestive, or insulting sounds and gestures; unwanted touching, brushing, patting, pinching, or attention to one's body; threats of, or deliberate, sexual assault or molestation. Sexual harassment is also considered when:

— Conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or education; or

— 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.

C. Determination of 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 the Union College Harassment Policy, the following understandings shall apply:

— 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.

D. Additional Behavior Prohibited by the Policy

The following behaviors are also prohibited by the Policy:

— Reprisals Against Complainant: It is a violation of Union College’s Harassment policy to retaliate against a complainant for filing a charge of harassment. A complaint of retaliation may be pursued using the steps followed for a complaint of harassment.

— Reprisals Against Respondent: Lodging a complaint of harassment is not proof of prohibited conduct. A complaint shall not be taken into account during reappointment, tenure, promotion, merit, or other evaluation or review until a final determination has been made that the College’s Harassment Policy has been violated.

— Knowingly filing false or malicious complaints: Knowingly filing a false or malicious complaint of harassment or of retaliation is a violation of the Harassment Policy. Such conduct may be pursued using the steps followed for a complaint of harassment. A complaint under this provision shall not constitute prohibited retaliation.

— Intentional breaches of confidence: All participants in the harassment complaint resolution process, including the complainant and respondent, witnesses, advisors, mediators, members of hearing panels, and officers, shall respect the confidentiality of the proceedings. Breaches of confidentiality jeopardize the conditions necessary to the workings of internal procedures for resolution of claims of harassment.

Participants are authorized to discuss the case only with those persons who have a genuine need to know. A complaint alleging an intentional breach of confidentiality may be pursued using the steps followed for a complaint of harassment. Such a breach may also constitute an act of retaliation. A breach of confidentiality may void the outcome of any previously agreed-upon resolution to a complaint.

E. Procedures for Dealing with Cases of Harassment

Members of the Union College community who feel they have been harassed may speak with the Director of Affirmative Action who is prepared to provide support and information. In addition, employees may seek help from their own supervisor or department head. If an employee feels uncomfortable going alone to one of the designated persons for help, she/he can bring a friend along for support. Whether or not a person consults with a College official, he or she will have the option of bringing the complaint under the informal or formal grievance procedures.

Union College hopes that accessibility and fairness inherent in these procedures will encourage all employees and students to use each step outlined in the Informal and Formal Grievance Procedures prior to instituting any proceeding regarding the subject matter of the grievance in any State or Federal court or agency.

The grievance procedure is provided for the internal resolution of differences and is not a legal forum. Those wishing to use legal counsel in the search for redress should do so within a judicial system.

Pursuit of the College's grievance procedure shall not be construed as the waiver of any right which would be provided under the jurisdiction of outside agencies, including courts of law. However, the filing of a grievance does not postpone any deadlines for filing of complaints with outside agencies.

F. Informal Discussion Stage of Grievance Resolution with the Director of Affirmative Action

The goals of the informal discussion stage are to discuss specific information about the incident(s) and allow the employee to explain the issues. The College official would be either the employee's supervisor and/or the Director of Affirmative Action.

Included in this discussion will be an exploration of options and a consideration of steps the employee may follow based upon advice from the College official to resolve the problem. The final determination as to which steps are taken will normally be determined by the complainant.

G. Informal Intervention and Mediation

Informal Intervention: The complainant should bring the problem to the attention of the Director of Affirmative Action (hereinafter referred to as the "Director") who will provide assistance in resolving the matter including acting as an intermediary for the complainant in bringing the nature of the complaint to the attention of the person against whom the complaint is made, in an attempt to resolve the problem to the satisfaction of all parties without publicity.

The Director need not come to a conclusion about whether harassment has or has not taken place but should take reasonable steps to prevent harassment or reprisal in the future. Examples of problem solving solutions that might come about through informal intervention are agreement by the accused to change his or her behavior or agreement by the accused to cease all social contact with the complainant.

Mediation: The complainant may bring the problem to the attention of a College appointed mediator (assigned by the Director). Within approximately seven (7) days of his or her involvement, the mediator shall schedule a meeting with each party, together or separately, to attempt to negotiate a settlement of the complaint.

— A settlement shall occur when the parties agree in writing to a resolution of the complaint. A resolution may include, but is not limited to, an agreement by accused not to repeat specific conduct or an apology or participation in counseling.

— If there is a sanction agreed to as part of the resolution of the complaint, the Vice President for Academic Affairs must also agree to the settlement in writing.

— A settlement need not imply an admission of culpability on the part of the accused.

— In order to participate in Mediation, the parties must state that they will not ask for the mediator’s notes or request the mediator to appear in any subsequent formal complaint process.

— If necessary and appropriately based on the circumstances surrounding the complaint as determined by the Director, action may be deferred no longer than one (1) year after the most recent conduct alleged to constitute harassment or until which time the complainant is no longer in a direct relationship with the person against whom the complaint is made (whichever is shorter).

Once any College official with authority to institute corrective action has knowledge of a harassment complaint, the College is effectively on notice. If, after consultation with the Director, the complainant does not wish to pursue the complaint further, the College must still respond by taking reasonable appropriate action.

H. Initiation of Formal Grievance Procedures

For a formal resolution of a complaint of harassment, the case will be referred to the appropriate College judicial system. All complaints of harassment should be filed with the Director as soon after the offending conduct as possible, but in no event, more than one (1) year after the most recent conduct alleged to constitute harassment. The Director may grant a reasonable extension of any other time period established in the Policy; however, the one-year limit for filing a complaint shall not be extended. The one-year “statute of limitations” on filing a complaint is intended to encourage complainants to come forward as soon as possible after the offending conduct and to protect respondents against complaints that are too old to be effectively investigated. There may, however, be sound reasons why a complainant does not come forward within a one-year period. Although such a complaint cannot be pursued under the Formal Complaint procedures, there may still be options for responding to such complaints through counseling or Informal Intervention. If sufficient evidence is available, an investigation can be undertaken by appropriate authorities to determine if the behavior constitutes misconduct sanctionable under other judicial processes. The Guidelines for pursuing these complaints are found in the Student Handbook for complaints against students (see Regulations Governing Conduct), Faculty Manual for complaints against faculty members, and Staff Manual for complaints against staff members. If found responsible through a College judicial process, offenders will be held responsible and will incur a sanction which may range from a Warning to Expulsion or Termination of Employment, depending on the severity of the offence.

A formal grievance proceeding shall be initiated by the complainant (hereafter referred to as the petitioner) by submitting a written request for a hearing to the Vice President for Academic Affairs in accordance with the timelines outlined above.

The request shall be accompanied by a written, sworn and notarized statement setting forth the facts giving rise to the complaint. The request and statement shall be prepared by the petitioner. The petitioner may receive assistance in preparing the statement from a person from the College (member of the faculty, staff, or student) other than a member of the staff who has been involved with the petitioner’s case. A copy of the request and the statement shall be provided the accused (hereafter referred to as the respondent) by the Vice President for Academic Affairs. The

statement shall be sufficiently detailed to fairly enable the respondent to respond to the allegations.

Within two (2) weeks of receipt of the statement, the respondent shall submit a written response to the Vice President for Academic Affairs. The respondent may receive assistance in preparing the response from a person from the College (member of the faculty, staff, or student) other than a member of the staff who has been involved with the petitioner's case or a person who is involved with the formal grievance procedure. The answer shall respond to the substance of the statement. If the respondent fails to answer, the Vice President for Academic Affairs may proceed with making a decision without it.

The Vice President for Academic Affairs determines whether or not to grant the request for a formal grievance hearing based upon a review of the formal complaint, the response, and factors including but not limited to whether there are any witnesses to the event or events, the time that elapsed between one event or events and the request for the formal grievance, the willingness of complainant to participate in the formal grievance process, the availability of the witnesses, and any other relevant factor deemed appropriate. The Vice President for Academic Affairs will make the determination within a reasonable period of time from the submission of the written statement. If the Vice President for Academic Affairs grants the request, the Vice President will appoint a Harassment Grievance Committee which will normally consist of two faculty members, two administrators, two staff members, and two alternates. If the grievance involved a student-faculty member complaint, the Vice President for Academic Affairs shall also appoint two students and one student alternate to the Grievance Committee. The list of Grievance Committee members and the names of the alternates shall be provided to the petitioner and the respondent. In the event the petitioner and/or the respondent believes that there are valid reasons to replace a Committee member, a request to appoint an alternate (setting forth the reasons) shall be made to the Chairperson within five days of receipt of the list. The Chairperson, at his/her sole discretion, is empowered to grant or deny the request. The Director will sit on the Grievance Committee as an advisor. Copies of the complaint and response shall be made available to the Grievance Committee members and to the petitioner. The Grievance Committee may request additional information from the petitioner, respondent, and any other party.

The Grievance Committee shall set a date and place for the hearing allowing the parties a reasonable time to prepare their cases, normally not to exceed two weeks. The petitioner and/or respondent may receive assistance in preparing and presenting the case from a person from the College (a member of the faculty, staff, or a student) other than a person who has been involved with the petitioner's case or who may become involved with the formal grievance procedure. If the petitioner or respondent intends to call a witness or witnesses at the hearing, the name(s) or the witness(es) shall be provided to the Grievance Committee and the other party.

The Grievance Committee may proceed independently to secure information for the hearing.

I. Hearings before the Committee

The hearing before the Committee shall be private. The participants shall include the committee members, petitioner, respondent, Director, as an advisor, and any necessary witnesses (only while they are testifying). In addition, one supporting person from the College (a member of the

faculty, staff or a student) may be chosen by the petitioner and respondent to attend the hearing. No person outside the College shall be allowed to attend the hearing except as a witness to give testimony.

The parties or their representatives and Committee members shall have the right, within reasonable limits set by the Chairperson, to question witnesses who testify orally. A witness who is unable to attend the hearing may make a written, sworn, and notarized statement which may, at the discretion of the Chairperson, be introduced and read at the hearing provided it is demonstrated in advance, by the party intending to use the witness' statement, that justifiable grounds exist for the witness' nonattendance. The statement, if allowed to be introduced, shall be disclosed to the other party sufficiently in advance of the hearing to permit the other party to contact the witness and prepare for an appropriate rebuttal at the hearing. The Committee is not required to follow the judicial rules of evidence.

J. Consideration of the Case by the Committee

After hearing the evidence, the Committee may request or accept written arguments from the parties and defer ruling on the case until such written arguments have been reviewed.

The Committee shall deliberate in closed session.

The Committee shall make a finding about the grievance in good faith in accordance with the specified procedure, which shall be forwarded in writing to the Vice President for Academic Affairs. The Vice President for Academic Affairs shall review the finding and either affirm or reject the finding or send the matter back to the Committee for further evaluation.

If the finding is affirmed by the Vice President for Academic Affairs, a complete record will be kept of the incident and the action taken and the following documentation will be made a part of the employee's Personnel File at the College: a copy of the sworn complaint; the findings (recommendation) of the Committee; and the written decision of the Vice President for Academic Affairs. Action will be conveyed to the Director and Human Resources.

The Vice President for Academic Affairs shall take appropriate action which may take the form of one or more of the following: counseling, close management supervision, reprimand, suspension, or dismissal.

If the Vice President for Academic Affairs rejects the finding of the Grievance Committee, a complete record will be kept stating the outcome of the proceedings and will be made part of the Harassment Central File. This file is immune from anyone's having access to its contents other than the Affirmative Action Officer and the College Attorneys.

The petitioner shall have the option to decide whether the following documentation shall be placed in his/her Personnel File: a copy of the sworn complaint; the findings (recommendations) of the Committee; and the written decision of the President.

College officials with access to Personnel Files and their contents would not be authorized to disclose the contents of the files without written approval/release from the employee to do so.

