



Appendix A
Resolution of a Complaint against a Student

Appendix A: Resolution of a Complaint Against a Student

The Sexual Misconduct Adjudication Process is the adjudication process applicable to complaints against Union College students accused of sexual misconduct (including sex or gender-based discrimination or harassment; sexual misconduct; and intimate partner violence (including domestic and dating violence)). As outlined in the Reporting section of the Sexual Misconduct Policy, an individual who wishes to make a report of sexual or other prohibited conduct is encouraged to make a report directly to the Title IX Coordinator, the Dean of Students Office, or Campus Safety. In every instance under this policy, the College, through the coordinated efforts of the Title IX Coordinator, the Senior Associate Dean of Students/Director of Student Conduct and the Director of Campus Safety will conduct an initial Title IX Assessment will make an immediate assessment of imminent risk to the individual or the campus community and respond accordingly.

This adjudication process is intended to be prompt, fair and impartial and will provide for disciplinary action, as appropriate. This adjudication process should be read in conjunction with the College's Sexual Misconduct Policy, which also prohibits retaliation. As set forth in the Union College Sexual Misconduct Policy, sex discrimination and violence have no place at Union College and will not be tolerated. Sex discrimination and violence by or against any Union College community member violates the College's core values, including the College's commitment to providing a safe community and equal opportunity to all. Sex and gender based discrimination, harassment and violence is prohibited by Union College policy and can constitute violations of state and/or federal law.

A. Informal Resolution

Informal resolution is designed to assist the parties in reaching a mutually agreeable resolution. An individual wishing to employ an informal resolution of a complaint will meet with the Senior Associate Dean of Students and Title IX Coordinator who will explain the process and options available to the student.

The Dean of Students Office may seek to resolve certain sexual misconduct cases through an informal process involving both the Complainant and accused. For example, a Complainant and Respondent may agree with the office that education and training for the Respondent are an appropriate and sufficient conclusion. If, based on the information provided about the incident, the Dean of Students office believes such a resolution is possible and appropriate, the office will speak with the Complainant. If the Complainant agrees, the office will then speak with the Respondent. If both the Complainant and Respondent are satisfied with a proposed resolution and the office believes the resolution satisfies the College's obligation to provide a safe and nondiscriminatory environment for all students, the resolution will be implemented, the disciplinary process will be concluded and the matter will be closed. If these efforts are unsuccessful, the disciplinary process will continue. Before starting these discussions, the Dean of Students Office will notify the Complainant and Respondent that each has the right to end the informal process at any time. **The College will not use informal resolution for cases involving allegations of sexual assault.**

The Dean of Students and the Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within thirty (30) days of the initial report.

B. Sexual Misconduct Adjudication Process

Formal Resolution of a complaint under this policy will occur through the use of an Adjudication Panel. A brief outline of the process is provided below. A description of each step in the process is outlined thereafter.

1. Initiating the Disciplinary Process
2. Responding to a Disciplinary Complaint
3. Fact Finding Investigation
4. Investigative Report
5. Document Review
6. Notice of Charges
7. Notice of Adjudication
8. Panel Adjudication/Decision
9. Sanctions
10. Outcome Letter
11. Appeals
12. Concerns about the Implementation of this Policy
13. Integrity of Process
14. Conclusion of Case

1. Initiating the Disciplinary Process

A person who has experienced an incident of sexual misconduct, including sexual harassment, sex/gender discrimination, sexual assault, relationship violence, stalking, sexual exploitation and any other sexual misconduct committed by a Union College student, may file a complaint against the student responsible for that conduct. Complaints may be filed with the Title IX Coordinator, Campus Safety, or the Senior Associate Dean of Students/Director of Student Conduct, who are also known collectively as the Title IX Team.

a. Complainant Initiated Process

The individual bringing the allegation is called the Complainant. The Complainant will be asked to submit three forms to initiate the disciplinary complaint. The Complainant's forms should be signed, dated, and submitted to the Title IX Coordinator. The Complainant is welcome to have an Advisor attend any meetings scheduled.

b. Timing of Complaints

There is no time limit for the submission of a complaint alleging sexual misconduct. A complaint may be filed at any time as long as the Respondent remains enrolled at the College. A complaint received after the term has ended or during a College break may result in a delay in the adjudication of the complaint until the beginning of the subsequent term in which the Respondent is enrolled. Please note that the College only has jurisdiction over students when they are enrolled.

The College reserves the right to initiate adjudication of a complaint immediately to protect the interests and safety of the College community even when the incident takes place after the end of the term.

c. Complaint Form

Prior to completing the Complainant's Statement, the Complainant will be asked to complete a less detailed Complaint Form. This document will contain basic information such as the time, date, location, and brief description of the allegations underlying the disciplinary complaint. This Complaint Form must contain sufficient detail to permit a reasonable person to understand the charges being brought and to be able to adequately respond. The Respondent will be given access to the Complaint Form prior to filing a written response statement.

d. Complainant's Statement

For a Complainant to file a disciplinary complaint against a student, the Complainant must submit a written statement detailing the allegations of the sexual misconduct. This statement is the first opportunity for the Complainant to describe the allegations against the Respondent. The statement should communicate the Complainant's full account of the event and its context, as well as the Complainant's reflections. To facilitate the process, the Complainant should follow these guidelines:

- **Describe the event(s) in full detail.** Relate in full the facts of the incident as you recall them. Take care to distinguish between what you saw, heard, or experienced first-hand from what you may have learned later from others.
- **Describe the context.** It is important for you to give your perception of the Respondent's conduct and the context in which the alleged incident occurred, including its location, and any witnesses to it.
- **Reflect on the event(s).** It is helpful for you to provide any conclusions you have drawn about the incident, stating clearly why you believe the Respondent's actions may have violated College policy or the Code of Conduct.

The Complainant's Statement should include the name of the Respondent, the date and location of the alleged sexual misconduct and the details of the alleged misconduct. This statement should provide as much detail as possible about the facts surrounding the alleged sexual misconduct.

A descriptive list of all sources of information (e.g., witnesses, correspondence, records, etc.) should be attached to the Complainant's Statement. This list should include information which the Complainant believes should be considered in deciding this disciplinary complaint, along with a brief explanation of why this information would be relevant and helpful to the process. The sources and/or location of this supporting information should be identified. Complainants are advised to not attempt to obtain this information themselves. The Investigator(s) will solicit any relevant statements or documents referenced through this process.

The Complainant's Statement is one of the most important documents to be considered in the Sexual Misconduct Adjudication Process. Once submitted, the Complainant's Statement may not be amended, but it may be supplemented through interviews with the Investigator(s) as set forth in Section C below. The statement must be prepared by the Complainant.

It is unacceptable for a Complainant to submit a statement written by others, including parents, support persons, or attorneys. However, Complainants are encouraged to share a draft of the statement with a support person who is well-positioned to discuss, among other matters, the statement's style, organization, length, and clarity, while also anticipating questions it may raise for the fact-finder. The Complainant will be required to sign a statement verifying that he/she authored the Complainant's Statement.

The Respondent will not be allowed to see the Complainant's Statement until **after** the Respondent has filed their statement in response to the original Complaint Form. Once the Respondent has submitted their statement, they will be given a copy of the Complainant's Statement. The Complainant will also be given a copy of the Respondent's Statement.

e. Limited Disclosure/ Non-Retaliation Acknowledgment

The Complainant will be required to sign a Limited Disclosure/Non-Retaliatio

n Acknowledgment, agreeing to limit disclosure of the disciplinary complaint, including the facts of the underlying complaint, to attorneys, counselors, clergy, physicians, other therapeutic professionals, family, and others to assist the Complainant in the process or others who may have relevant information with respect to the underlying complaint. The Complainant agrees not to harass, threaten, and/or otherwise inappropriately compel others in an effort to provide information with respect to the underlying complaint. This limited disclosure obligation is to preserve the integrity of the investigative process and also to prevent allegations of retaliation. Through this Acknowledgment, the Complainant also agrees to refrain from any retaliatory conduct against the Respondent or any

witnesses in the matter and may be responsible for any retaliation by persons affiliated with the Complainant (i.e. a friend or family member).

f. No Contact Order

Upon the initiation of a complaint under the Sexual Misconduct Adjudication Process, a “No Contact Order” will be put into place between the Complainant and Respondent by the Senior Associate Dean of Students/Director of Student Conduct. The No Contact Order will bar any communication or contact between the Complainant and Respondent and will prohibit any interaction or exchange between them, either directly or through others (e.g. friends, family members, attorneys, others, etc.). The Title IX Team will work with the Complainant and Respondent to facilitate the terms of the No Contact Order so that they may attend classes and use College facilities as appropriate. The goal of the No Contact Order is to allow both the Complainant and Respondent, to the extent possible, to continue their academic and social endeavors while still avoiding contact during the adjudication of the complaint. The No Contact Order can be as detailed as necessary, include specific plans of where the Complainant and Respondent can be at specific times. A No Contact Order can be kept in place after the conclusion of the Sexual Misconduct Adjudication Process. **In cases where a demonstrated violation of the No Contact Order has been shown, the responsible party may be separated from the College pending the final resolution of the disciplinary complaint as an interim measure.** The Complainant and/or Respondent may also be able to seek restraining orders or other orders of protection outside of the College, through the courts; the College will also endeavor, as possible, to enforce these orders of protection on campus. Information about obtaining these types of orders can be obtained from Campus Safety by calling 518-388-6911 or through local law enforcement.

g. Administrative Complaints

Union College may independently initiate a disciplinary complaint against a student under this policy. In this type of Administrative Complaint, the College will act as the Complainant in the adjudication of a sexual misconduct complaint against a student. Such complaints will proceed under the processes outlined in this policy and may result in disciplinary action as if the Complainant were a student. A victim/survivor will be considered a witness in an Administrative Complaint and will be given the option to be as involved or as uninvolved as they wish.

The College affirms the right of a victim/survivor to decide whether they wish to be involved in a Sexual Misconduct Adjudication Process. At the same time, and under limited circumstance, when the conduct at issue involves a threat to the campus safety (which includes but is not limited to the involvement of violence, the use of weapons, or repeat offenses) the College will be compelled to move forward with a Sexual Misconduct Adjudication Process. Under these circumstances and whenever possible, the College will endeavor to inform the victim/survivor of its need to move forward prior to commencing the Sexual Misconduct Adjudication Process, and will inform the victim/survivor how their

information will be shared. Support resources and interim measures will be available as appropriate and a No Contact Order will be put into place.

To initiate an Administrative Complaint, the College will obtain enough information about the incident to prepare a complaint statement which will be used in place of the Complainant's Statement within this process. The gathering of information for the complaint statement usually involves obtaining an account from the victim/survivor, if they are willing to provide such information. After obtaining that account, a victim/survivor will be treated as a witness within the adjudication of the Administrative Complaint. The victim/survivor will have the option to receive information regarding the progress of the adjudication or may request not to receive such information. Although the victim/survivor is not the initiator of this action, they will be informed of the outcome. At any point, the victim/survivor may join the Sexual Misconduct Adjudication Process as a Complainant.

The Respondent will be notified when an Administrative Complaint is initiated and will be provided with a letter from the appropriate office in place of the Complaint Form. The Respondent will be given the opportunity to submit a written Respondent's Statement in response. Once the Respondent has submitted their written response they will be given a copy of the Complaint Statement. Then the adjudication of the complaint will proceed under the process outlined herein.

2. Responding To a Disciplinary Complaint

The person against whom the disciplinary complaint is brought is called the Respondent. The Respondent shall be given written notification when a disciplinary complaint has been filed against him or her.

a. Initial Notification Meeting

Within five (5) days of receiving notice of the disciplinary complaint, the Respondent must meet with the Title IX Team. The Respondent is welcome to have an Advisor attend.

b. Limited Disclosure/Non-Retaliation Acknowledgement

The Respondent will be required to sign a Limited Disclosure/Non-Retaliation Acknowledgment, agreeing to limit disclosure of the disciplinary complaint, including the facts of the underlying complaint, to attorneys, counselors, clergy, physicians, other therapeutic professionals, family, and others to assist the Respondent in the process or others who may have relevant information with respect to the underlying complaint. The Respondent agrees not to harass, threaten, and/or otherwise inappropriately compel others in an effort to provide information with respect to the underlying complaint. This limited disclosure obligation is to preserve the integrity of the investigative process and also to prevent allegations of retaliation. Through this Acknowledgment, the Respondent also agrees to refrain from any retaliatory conduct against the Complainant or any witnesses in the matter

and may be responsible for any retaliation by persons affiliated with the Respondent (i.e. a friend or family member).

c. Duty to Cooperate

The Respondent has an obligation to cooperate with the Title IX Team regarding this matter. Refusal or failure by the Respondent to meet and cooperate with the Title IX Team, investigators, or other Administrators involved in the matter or to sign the Limited Disclosure/Non-Retaliation Acknowledgement, as determined by the Senior Associate Dean of Students (or designee), may result in (1) removal of the Respondent as an interim measure and/or (2) the adjudication of the disciplinary complaint without input from the Respondent.

d. Complaint Form

Once the Respondent has signed the Limited Disclosure/Non-Retaliation Agreement, the Title IX Team will provide the Respondent with a copy of the Complaint Form, discuss the nature of the complaint, explain the rights and responsibilities of the Respondent, explain the prohibition against retaliation, explain the Sexual Misconduct Adjudication Process, and give the Respondent a copy of the relevant policies.

e. No Contact Order

Upon the initiation of a complaint under the Sexual Misconduct Adjudication Process, a No Contact Order will be put into place between the Complainant and Respondent. The No Contact Order will bar any communication or contact between the Complainant and Respondent and will prohibit any interaction or exchange between them, either directly or through others (e.g. friends, family members, attorneys, others, etc.). The Title IX Team will work with the Complainant and Respondent to facilitate the terms of the No Contact Order so that they may attend classes and use College facilities as appropriate. The goal of the No Contact Order is to allow both the Complainant and Respondent, to the extent possible, to continue their academic and social endeavors while still avoiding contact during the adjudication of the complaint. The No Contact Order can be as detailed as necessary, include specific plans of where the Complainant and Respondent can be at specific times. A No Contact Order can be kept in place after the conclusion of the Sexual Misconduct Adjudication Process. In cases where a demonstrated violation of the No Contact Order has been shown, the responsible party may be separated from the College pending the final resolution of the disciplinary complaint as an interim measure. The Complainant and/or Respondent may also be able to seek restraining orders or other orders of protection outside of the College, through the courts; the College will also endeavor, as possible, to enforce these orders of protection on campus. Information about obtaining these types of orders can be obtained from Campus Safety by calling 518-388-6911 or through local law enforcement.

f. Options

Upon reviewing the Complaint Form, the Respondent has two (2) options for resolving the allegations.

(1) *Pre-Fact Finding Investigation Resolution of Complaint/Acceptance of Allegations*

After meeting with the Title IX Team and reviewing the Complaint Form, the Respondent has the right to end the Sexual Misconduct Adjudication Process by accepting responsibility for the conduct alleged in the Complaint Form. If the Respondent accepts responsibility for the conduct alleged in the Complaint Form, the process would not proceed to the Fact Finding Investigation phase. Instead, the matter would be referred to the Senior Associate Dean of Students to decide the appropriate disciplinary action against the Respondent.

The Senior Associate Dean of Students may take the Respondent's acceptance of responsibility into consideration in determining the appropriate sanction. Once the Respondent accepts responsibility, such acceptance cannot be withdrawn. A written finding of the acceptance of responsibility and the resulting disciplinary action will be issued by the Senior Associate Dean of Students, which will become part of the Respondent's student records and will be shared with the Complainant. If the Respondent does not wish to participate in this resolution process, then he/she will need to prepare a Respondent's Statement as noted below. The Respondent must decide whether he/she would like to utilize this resolution process before expiration of the **seven (7) days** for submitting the Respondent's Statement.

(2) *Respondent's Statement*

If the Respondent does not accept responsibility, they will be asked to provide a written response to the information contained in the Complaint Form. The Respondent's Statement must be submitted to the Title IX Coordinator within seven (7) days after the meeting with the Title IX Team. The Respondent's Statement should contain the Respondent's full recollection of the alleged incident. This statement is the Respondent's opportunity to respond to the allegations made by the Complainant. The statement should communicate the Respondent's recollection of the event and its context, as well as the Respondent's reflections by following these guidelines:

- Describe the event(s) in full detail. Relate in full the facts of the incident as you recall them. Take care to distinguish between what you saw, heard, or experienced first-hand from what you may have learned later from others.
- Describe the context. It is important for you to give your perception of the conduct and the context in which the alleged incident occurred, including its location, and any witnesses to it.

- Reflect on the event(s). It is helpful for you to provide any conclusions you have drawn about the incident, stating clearly why you believe your actions have not violated College policy or the Code of Conduct.

A descriptive list of all sources of information (e.g., witnesses, correspondence, records, etc.) should be attached to the Respondent's Statement. That list should include information which the Respondent believes should be considered in deciding the disciplinary complaint, along with a brief explanation of why this information would be relevant and helpful to the process. The sources and/or location of this supporting information should be identified. Respondents are advised to not attempt to obtain the information themselves. The Investigator(s) will solicit relevant statements or documents referenced through this process.

The Respondent's Statement will be one of the most important documents to be considered in the Sexual Misconduct Adjudication Process. Once submitted, the Respondent's Statement may not be amended, but it may be supplemented through interviews with the Investigator(s). The statement must be prepared by the Respondent. It is unacceptable for a Respondent to submit a statement written by others, including parents, support persons, or attorneys. However, the Respondent is encouraged to share a draft of the statement with a support person who is well positioned to discuss, among other matters, the statement's style, organization, length, and clarity, while also anticipating questions it may raise for the fact-finder. The Respondent will be required to sign a statement verifying that they authored the Respondent's Statement. Once the Respondent has submitted their statement, the Respondent will be given a copy of the Complainant's Statement. The Complainant will also be given a copy of the Respondent's Statement.

3. Fact Finding Investigation

After both parties have submitted their statements to the Title IX Coordinator, the Title IX Coordinator will initiate a Fact-Finding Investigation, utilizing the College's neutral investigators. It is the responsibility of the Investigator(s), not the parties, to gather the evidence relevant to the Complaint and the facts raised in the parties' statement, to the extent reasonably possible. During the course of the investigation, the Investigator(s) may utilize some or all of the following procedures, in whatever order the Investigator(s) deems most appropriate. The scope of the Fact Finding Investigation will not be limited to information provided by the parties or to the violations outlined in the disciplinary complaint. In all cases, the Investigator(s) will conduct an impartial investigation into the allegations of the disciplinary complaint, reviewing all evidence deemed to be relevant. Parties and witnesses will be requested to make themselves reasonably available to the Investigator(s). Refusal by a party or witness to cooperate with the Investigator(s) in the Fact Finding Investigation, as determined by the Senior Associate Dean of Students, may result in disciplinary action against the person refusing to cooperate. A refusal to cooperate does not preclude completion of the investigation.

a. Document Review

Once statements have been submitted by the parties, the Investigator(s) will review the statements and all of the supporting material referenced. The Investigator(s) will then attempt to obtain any documents or other materials deemed relevant to the investigation. Any documents or information deemed to be material to the findings regarding the disciplinary complaint or any other violations will be disclosed to both parties for comment or rebuttal.

b. Party Interviews

The Investigator(s) will interview the Complainant and the Respondent separately. This meeting is an opportunity for the participant to discuss his/her recollection of any event in question, supplement any written statements already submitted, voice any concerns, and work with the Investigator(s) to determine what information may be helpful in the investigation of the allegations. Parties may also discuss the impact that this experience has had on them. All of the materials provided to the Investigator(s) by either the Complainant or the Respondent will be disclosed to the other party in advance of their respective interviews, including the complete statement of the other party. The Investigator(s) may interview the parties more than once and as necessary. Both the Complainant and Respondent may have his/her Advisor (as defined hereinafter in this Policy) accompany them to the meetings between the Investigator(s) and the party being assisted by the Advisor, but such Advisor may not participate in the conversation. Prior to sitting in on any interviews, the Advisor will be required to sign a Limited Disclosure/Non-Retaliation Acknowledgment, agreeing to limit discussion of anything relating to the disciplinary complaint with anyone other than those involved with this process. At the conclusion of the interview, participants are permitted to make an optional closing statement.

c. Witness Interviews

The Investigator(s) will attempt to contact and interview any witnesses identified by the parties that the Investigator(s) deems to be relevant to the resolution of the disciplinary complaint. The Investigator(s) may also interview any other persons they find to be potentially relevant to this matter. Witnesses may not bring Advisors to their interviews. Prior to being interviewed, a witness will be required to sign a Limited Disclosure/Non-Retaliation Acknowledgment, agreeing to limit disclosure of anything relating to the disciplinary complaint and their interview with anyone other than those involved within the process. Through this Acknowledgment, the witness will also agree to refrain from any retaliatory conduct against the parties or any witnesses in the matter and may be responsible for any retaliation by persons affiliated with them (i.e. a friend or family member). The Investigator(s) will employ best efforts to interview relevant witnesses who are no longer on campus or in the Schenectady area, attempting to contact them by phone or internet.

d. Expert Witnesses

The Investigator(s) reserve the right to consult with any experts which the Investigator(s) deems helpful to the determination of the facts of this case. An expert witness could be consulted to review the allegations and information and provide a professional opinion or otherwise give input regarding information or evidence discovered in the Fact Finding Investigation.

e. Admissibility of Evidence

The fact finding investigation process is intended to arrive at the truth of the matter without the formalities associated with rules and procedures specifically designed by lawyers to manage courtroom litigation. Students can address issues and present documents to the Investigator without concerns about admissibility. It should be noted that if the Investigator determines that the issues raised and/or documents presented are relevant and suggest whether the alleged conduct occurred then, in the interest of fairness, that information will be disclosed to the parties at or before the time the Investigative Report is made available for review by the parties.

(1) *Sexual History*

In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence at a hearing. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will not be permitted.

(2) *Medical and Counseling Records*

The use of medical and/or counseling records in the adjudication process is rare. Medical and counseling records are confidential documents that students will never be required to disclose in the process. Medical and counseling documents being privileged means that they cannot be shared with anyone other than the treating professional unless the patient agrees to disclosure. Students should be aware that there are legal implications to agreeing to produce privileged records. Because of this, students are encouraged to seek advice from a knowledgeable source about the possible consequences of releasing this information.

A Complainant or Respondent who, after due consideration, believes that his/her own medical or counseling records would be helpful in determining whether sexual misconduct occurred has several options for **voluntarily** presenting this information:

- The Complainant or Respondent can voluntarily decide to present their own medical or counseling records to the Investigator as part of the documents which they would like to have the fact finder consider in deciding the disciplinary complaint. Please note that if a party decides to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is inappropriate and will not be considered.
- On occasion, the Investigator may ask the Complainant or Respondent to voluntarily agree to provide these records if the Investigator believes that such documentation exists and that it would be helpful in deciding the disciplinary complaint. A party is under **no obligation** to provide this information and may simply say “no” to this request. A party has a right to refuse to provide these records and that refusal is completely acceptable. Prior to responding to such a request, a party is encouraged to consult with their Advisor about the implications of agreeing or denying the request. Please note that if a party does decide to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is inappropriate and will not be considered.
- The Investigator may ask a Complainant or Respondent to voluntarily provide a verification of therapeutic or medical services to confirm simply that such treatment occurred; however, the verification will not provide any details regarding that treatment.

On rare occasions, a person may be in possession of the medical and/or counseling records of another party or witness. Such records can only be presented to the Investigator under the following circumstances: (i) The person can show that the records are relevant to the pending disciplinary complaint; (ii) the person can document or otherwise prove that the records were legally obtained and may be disclosed to those not in possession of the records; and (iii) the records can be authenticated. Failure to meet any of these conditions means that the records will not be considered in the determination regarding sexual misconduct.

4. Investigative Report

Once the Fact Finding Investigation has been completed, the Investigator(s) will evaluate the information obtained during this process. The Investigator(s) will prepare a report summarizing and analyzing the relevant facts received through the Investigation, noting any supporting documentation or statements. The Investigator(s) will present the Investigation Report to the Senior Associate Dean of Students and the Title IX Coordinator for review. The Senior Associate Dean of Students/Director of Student Conduct and the Title IX Coordinator will review the investigative report, any witness statements and any other documentary evidence to determine whether the proffered information contained therein is relevant and material to the determination of

responsibility given the nature of the allegation. In general, the Senior Associate Dean of Students/Director of Student Conduct may redact information that is irrelevant, more prejudicial than probative, or immaterial. The Senior Associate Dean of Students/Director of Student Conduct may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty. Neither the Complainant nor the Respondent shall have the right to review redactions from the Investigative Report.

Once the report is finalized, it will be provided to both the Complainant and the Respondent for review. The report may not contain information that has been redacted as determined by the Senior Associate Dean of Students and the Title IX Coordinator. The final report will be made available to the Sexual Misconduct Adjudication Panel. Under ordinary circumstances, the Investigative Report should be submitted to the Senior Associate Dean of Students and the Title IX Coordinator within fifteen (15) days after the completion of the Fact Finding Investigation.

5. Document Review

Both the Complainant and Respondent will be provided the opportunity to review the final investigative report. This document review will take place within the Dean of Students Office or in the Title IX Coordinator's Office – the documents and any evidence, either originals or copies, will not be permitted to leave the office. The Complainant and the Respondent may bring their Advisor to this review.

Any requested changes or concerns must be submitted in writing to the Senior Associate Dean of Students by the respective parties within two (2) days of reviewing the document(s). The Complainant has the option, as outlined below, to withdraw the complaint within two (2) days of reviewing the final investigative report. Additionally, the Respondent has the option, as outlined below, to accept responsibility for the allegation(s) and the Senior Associate Dean of Students will decide the appropriate disciplinary action against the Respondent. The Senior Associate Dean of Students will notify both parties should there be any changes within two (2) days of receipt of written notification from either party. The Senior Associate Dean of Students, in consultation with the Title IX Coordinator, will provide a copy of the final investigative report to the Adjudication Panel.

a. Options

Upon review of the final investigative report and before the final investigative report is provided to the Adjudication Panel, both the Complainant and Respondent have the option to:

(1) Respondent May Accept Responsibility

If the Respondent accepts responsibility for the conduct alleged in the Investigative Report, the process would not proceed to the Adjudication Panel. Instead, the matter would be referred to the Senior Associate Dean of Students

to decide the appropriate disciplinary action against the Respondent. Once the Respondent accepts responsibility, such acceptance cannot be withdrawn. A written decision will be provided by the Senior Associate Dean of Students to both parties. These documents will become part of the Respondent's student records in accordance with policy.

(2) Respondent May Not Accept Responsibility

If the Respondent does not accept responsibility for the conduct alleged in the Investigative Report, the Adjudication Panel will receive the final Investigative Report and the process will proceed as outlined below.

(3) Complainant May Withdraw Complaint

If the Complainant wishes to withdraw their complaint after reviewing the Investigative Report they may do so in writing within two (2) days of reviewing the document(s). Once a complaint has been withdrawn, it cannot be filed again by the Complainant within in this process. The College reserves the right to proceed with the disciplinary complaint as an Administrative Complaint, even after a Complainant withdraws it, at the request of the Respondent or in order to protect the interests and safety of the Union Community. If the College does not choose to move forward, the withdrawal of the complaint will, under most circumstances, end the Sexual Misconduct Adjudication Process for that complaint.

6. Notice of Charges

The Senior Associate Dean of Students/Director of Student Conduct will send a copy of a written Notification Letter to both the Complainant and the Respondent. The Notification Letter provides each party with a brief summary of the conduct at issue and the specific provisions of the policy that are alleged to have been violated.

7. Notice of Adjudication

Once each party has met with the Senior Associate Dean of Students/Director of Student Conduct and reviewed the documents related to the case, a Notice of Adjudication is sent to the Complainant and the Respondent. In addition, the Notice provides the parties with the date, time, and place of their respective meetings with the Panel, as well as the name(s) of the person(s) hearing the case. The Complainant and Respondent will be meet separately with the Panel.

In general, the Panel meetings will be scheduled within ten (10) days of the date of the Notice of Adjudication. Under extenuating circumstances, this time frame may be extended.

8. Panel Adjudication/Decision

Upon determining that all the issues regarding the disciplinary complaint have been fully investigated and adequately addressed, the Title IX Coordinator and the Chair of the Adjudication Panel will select four (4) members to serve on the Panel.

The Adjudication Panel is typically composed of two (2) faculty or staff members, two (2) students, and the chair, a Senior Student Affairs Administrator. Each member, including the chair, will have an equal vote. A quorum of the Adjudication Panel shall consist of the chair, and two (2) panel members.

The Adjudication Panel will have the responsibility to determine (1) whether College policy has been violated and (2) what recommended disciplinary action should be imposed if Union College's Sexual Misconduct policy is found to have been violated.

The Adjudication Panel has been given the responsibility by the College Administration to adjudicate proscribed conduct. The Panel will adjudicate cases involving an alleged violation of the Sexual Misconduct Policy in accordance with the procedures set forth herein.

The parties are permitted to request that the Panel ask questions of the other party. These questions are to be submitted, in writing, in advance of the Pre-Decision Conference to the Title IX Coordinator. The Panel will determine the appropriateness of any question presented and may elect not to ask a question that is deemed irrelevant, is deemed to have already been addressed, or a question that is deemed inflammatory, derogatory, or degrading.

Upon receipt of the investigative report, the Adjudication Panel will meet and review the document. The Panel must review the Investigation Report containing all pertinent information regarding the incident in question. Prior to the Panel's adjudication of the case, the Panel Chair will schedule separate Pre-Decision Conferences with the Complainant and the Respondent. During the Pre-Decision Conferences, the Panel will provide the Complainant and Respondent each with an opportunity to comment on and respond to the information presented, ask and answer questions, and provide any additional information that should be considered prior to a final decision being rendered regarding the disciplinary complaint. The Complainant and Respondent may each provide a rebuttal statement, impact statement or narrative, or identify any new documents or information that may be relevant to the finding at the Pre-Decision Conference.

Present at the Pre-Decision Conference will be the Complainant and their advisor or the Respondent and their advisor as well as the Administrative Panel members, the Title IX Coordinator, and/or College counsel. College counsel may not be present during the Pre-Decision Conferences, however, the Panel Chair reserves the right to consult at any time.

Normally, within five (5) days of the Pre-Decision Conferences, the Complainant and Respondent will be afforded the opportunity to review the entire written transcript of the testimony offered by both parties before the Adjudication Panel. Any additional information, statements, or additional questions a party determines should be raised with the other party (based upon a review of the transcript) must be provided, in writing,

to the Title IX Coordinator within two (2) business days after receipt of the transcript. At no time are the Complainant and Respondent to contact any member of the Panel directly. All communication between the Complainant and Respondent and the Panel will be done through the Title IX Coordinator or a designee.

After meeting with the Complainant and Respondent and reviewing any additional information and/or narratives submitted for consideration, the Adjudication Panel may determine that additional inquiry is needed in order for a decision to be rendered regarding the disciplinary complaint. If so, the Adjudication Panel Chair will ask the Title IX Coordinator to initiate a supplemental fact-finding investigation into the areas of concern. The investigator will focus any additional investigation on the specific inquiries posed by the Adjudication Panel. The investigator will then prepare and submit a Supplemental Investigation Report addressing the findings as to the issues raised by the Panel. If the supplemental fact-finding investigation causes the process to exceed the 60 day timeframe, the Title IX Coordinator will advise the Complainant and Respondent in writing of the delay and offer an explanation of a timeline. The Panel Chair reserves the right to schedule subsequent, separate Pre-Decision Conferences to address the findings from the supplemental investigation or any additional questions requested by either party with the Complainant and Respondent, should the Panel feel, at its discretion, that such a meeting would be helpful to the process.

The Panel Adjudication process is intended to provide a fair and ample opportunity for each side to represent his/her account of the incident and for the Panel to determine whether College policy was violated and to recommend appropriate sanctions, if necessary. The Panel is a formal proceeding not comparable to a criminal or civil process; it is the mechanism by which the College assesses, and as appropriate, takes formal disciplinary action regarding a violation of College policy.

There will be a single transcript made of the meetings which shall be the sole property of the Dean of Students Office. The transcript will be provided to for review to the Complainant and Respondent in connection with the Pre-Decision Conference Hearings in order to raise additional questions for the Panel to ask the other party, to be provided to the Title IX Coordinator in writing according to procedures set forth herein, and/or in connection with an appeal. The transcription will be maintained for a period of four (4) months from the date the appeal period has lapsed or until an appeal decision has been rendered, whichever is later.

a. Advisors

An advisor is any individual selected by the Complainant or Respondent, including retained legal counsel. If the Complainant or Respondent elects to have an advisor attend, the advisor is permitted, subject to restrictions, to attend the sessions with the investigators, meetings with the Title IX Coordinator, meetings with the Senior Associate Dean of Student/Director of Student Conduct, meetings with Dean of Students Office, and/or appearances before the Adjudication Panel. The advisor is permitted to provide the Complainant or Respondent advice during these meetings at appropriate times when the student being advised is not answering questions. The

advisor is not allowed to argue for, advocate for, or present the case for the Respondent or Complainant or directly address the investigators, the Senior Associate Dean of Student/Director of Student Conduct, Dean or Students or designee, or Panel. The College reserves the right to remove or dismiss advisors from meetings who become disruptive, who do not abide by the restrictions set forth herein, or who intentionally delay the investigation or adjudication process.

Advisors who wish to communicate about the case may contact the Senior Associate Dean of Students/Director of Student Conduct or the Title IX Coordinator after signing the Limited Disclosure/Non-Retaliation Acknowledgement.

b. Prior Sexual History

In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this Policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will not be permitted.

c. Request to Reschedule Panel Meeting

Either party can request to have an Adjudication Panel meeting rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted to the Senior Associate Dean of Students/Director of Student Conduct with an explanation for his or her request at least three (3) business days prior to the scheduled meeting. The Senior Associate Dean of Students/Director of Student Conduct will have sole discretion to grant or deny any request to reschedule a Panel Meeting.

d. Consolidation of Adjudication Proceedings

At the discretion of the Senior Associate Dean of Students/Director of Student Conduct, in consultation with the Title IX Coordinator, multiple reports may be consolidated against a Respondent into one Adjudication Panel meeting, if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident. Matters that include related conduct that would regularly have been heard under the Code of Student Conduct may be consolidated even if they involve multiple Complainants and/or multiple Respondents.

e. Attendance at Adjudication Panel Meeting

When a party fails to attend the Panel meeting without a reason that the Senior Associate Dean of Students/Director of Student Conduct finds compelling, the

meeting may be held in their absence at the discretion of the Senior Associate Dean of Students/Director of Student Conduct.

Once the investigation has commenced, a Respondent will not be permitted to withdraw from the College to prevent proceeding with the case. If a Respondent chooses not to participate, the College may move forward with the hearing and imposition of sanction, if any, in absentia. The Respondent's academic transcript will be marked Withdrawal Pending Disciplinary Action, or, if finally resolved in absentia, with the final outcome in accordance with regular practice under this Policy.

f. Participants in Adjudication Panel Procedures

The Adjudication Panel process is a closed meeting; it is not open to the public. The individuals who may appear before the Panel are: the Complainant; the Respondent; any individual serving as an approved Advisor; and the Title IX Coordinator.

g. Safeguarding of Privacy

All parties involved are required to keep the information learned in preparation for the Panel adjudication private. No copies of documents provided are to be made or shared with any third parties other than a party's Advisor. All copies provided must be returned to the College at the conclusion of the hearing and any appeals. Any breach of this duty is subject to further disciplinary action by the College.

h. Deliberation

After the Complainant and Respondent have met with the Adjudication Panel, the panel members will conduct their deliberations in private. The Panel will normally complete their deliberations within five (5) days, but every attempt will be made to complete the deliberations promptly.

The Panel will determine a Respondent's responsibility by a preponderance of the evidence. This means that the Judicial Board will decide whether it is "more likely than not," based upon all of the relevant information, that the Respondent is responsible for the alleged violation(s). The Panel must reach a decision on responsibility by majority vote.

If the Panel finds the Respondent responsible, the Panel will then recommend appropriate sanctions to the Senior Associate Dean of Students/Director of Student Conduct. The Panel will be able to review the impact statements from either party prior to making their recommendations to Senior Associate Dean of Students/Director of Student Conduct. The Senior Associate Dean of Students/Director of Student Conduct will review the recommendations and impose an appropriate sanction.

The findings of the Panel will be submitted to the Senior Associate Dean of Students/Director of Student Conduct in writing. The findings will detail the findings of fact and the basis/rationale for the decision of the Panel, making reference to the evidence that led to the finding.

9. *Sanctions*

A Panel that finds a Respondent responsible for a violation of this Policy will recommend appropriate sanctions that may include, but are not limited to, those set forth below. Sanctions may be issued individually or a combination of sanctions may be imposed.

New York State law requires that any student determined to have committed sexual assault may receive a sanction ranging from suspension to expulsion. A student returning from suspension will return on probation, with 8 points.

Any student who is determined to have committed non-consensual sexual contact or any other prohibited form of conduct may receive 2-10 points and a sanction ranging from a conduct warning to suspension or expulsion.

The Senior Associate Dean of Students/Director of Student Conduct may deviate from the range of recommended sanctions, based upon a full consideration of the following factors:

- The Respondent's prior discipline history;
- How the College has sanctioned similar incidents in the past;
- The nature and violence of the conduct at issue;
- The impact of the conduct on the Complainant;
- The impact of the conduct on the community, its members, or its property;
- Whether the Respondent has accepted responsibility for his/her actions;
- Whether the Respondent is reasonably likely to engage in the conduct in the future;
- The need to deter similar conduct by others; and
- Any other mitigating or aggravating circumstances, including the College's values.

In appropriate cases, a Panel may determine that the conduct was motivated by bias, insofar as a Complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, age, disability or other protected class as defined in federal and/or state laws. Where the Panel determines that student misconduct was motivated by bias, the panel may elect to recommend an increase in the sanction imposed as a result of this motivation.

The Panel will make a recommendation about the appropriate sanction(s). The Senior Associate Dean of Students/Director of Student Conduct may affirm or modify the recommended sanction(s).

Upon a finding of proscribed conduct, points ranging from 0-10, accompanied by sanctions including but not limited to those listed below, may be imposed.

- *Educational Programs*

Requirement that the Respondent take part in a required educational program on or off campus. The Judicial Board may require Respondent to participate in an online educational program that addresses particular issues.

- *Expulsion*

Permanent separation from the College including loss of student status; reinstatement or readmission is not possible.

- *Interim Restrictions*

Imposition on an interim basis of any sanction or sanctions listed in this section.

- *Loss of Privileges*

Denial of specified privileges for a designated period of time. These may include loss of housing privileges, inability to participate in term abroad programs or other programming and activities offered by the College.

- *Physical Restrictions*

A directive given to the Respondent that does not permit him/her/them to be in specified locations on College Premises.

- *Probation*

The next violation is likely to result in Suspension or Expulsion.

- *Residence Reassignment*

Relocation to another living space on campus.

- *Residence Termination*

Removal from campus housing.

- *Suspension*

Separation from the College community for a defined period of time, usually no fewer than two (2) Academic Terms. Additional stipulations or conditions for reinstatement may be assigned. Reinstatement is contingent upon a positive administrative review. A student under suspension is not allowed to transfer in credit for courses taken at other institutions during the defined period of time of the suspension.

- *Suspension with Academic Delay*

The student will be suspended from the College, but the commencement of the suspension will be deferred and the student will be permitted to remain enrolled in classes until the end of the term. However, if the student fails to comply with any interim restriction which may be imposed during the deferral period (e.g., fails to comply with a “no contact” order), violates the Student Conduct Code while in the deferral period and is found responsible, or fails to complete the assigned sanctions by the given deadline(s), the student will be immediately suspended. During the deferral period, the student is not considered to be in good standing with the College and may not represent the College on any athletic team other than intramurals, hold an office in any student organization registered with the College, represent the College in any extracurricular activity or official function, or participate in any study abroad program.

- *Withholding the Granting of a Degree or Revocation of a Degree*

Action by the College to revoke a student’s degree or to withhold it for a specified amount of time.

More than one of the sanctions listed above may be imposed for any single violation.

10. Outcome Letter

The outcome of the Adjudication Panel will be final and communicated to the Complainant and Respondent in writing, usually within seven (7) days from the date the process is concluded. The notification of each party should occur at or near the same time.

Both parties have the right to be informed of the findings of fact, decision, rationale for the decision, and sanction (if any), in accordance with applicable law.

The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of the appeal.

The College reserves the right to notify parents/guardians of dependent students regarding the outcome, in accordance with the College’s FERPA Policy. The College will notify the Title IX Coordinator of the outcome and also reserves the right to designate which College officials have a need to know about individual conduct complaints pursuant to FERPA requirements.

11. Appeals

Both the Complainant and Respondent are entitled to appeal a Panel’s decision issued through the Sexual Misconduct Adjudication Process. The Complainant and Respondent are both entitled to only one appeal. The person filing the appeal is called the appellant. An appeal must be filed, in writing, and provided to the Title IX Coordinator using the Notice of Appeal form within **seven (7) days** of the notice of

decision. The Notice of Appeal form can be obtained by emailing: kelleym2@union.edu or it may be accessed from <http://www.union.edu/titleix>.

The Notice of Appeal should be submitted to:

Melissa Kelley
Title IX Coordinator
Reamer 403E
Kelleym2@union.edu

The point of an appeal is not to provide Complainant and/or Respondent with a new adjudication process nor is it intended to provide Complainant and/or Respondent with the opportunity to simply declare that the Panel's decision was wrong. The Complainant and Respondent may appeal the decision of the Panel based only upon the grounds outlined below with respect to the each of the violation(s) found to have occurred. Appeals are heard by an Appeals Panel, overseen and appointed by the Title IX Coordinator, and is comprised of three (3) impartial, trained persons: a senior administrator appointed by the President or his/her designee, who acts as the chair of the Panel, and two trained panel members, who are part of the Adjudication Panel pool of members and were not part of the original decision making process. The imposition of sanctions remain in effect during the period of the appeal proceedings. The opposing party will be notified that an appeal has been filed and will receive a copy of the Notice of Appeal. The opposing party has **two (2) days** to respond to the appeal in writing. This response should be submitted to the Title IX Coordinator and will be reviewed by the appellate panel. In some situations, both the Complainant and the Respondent may file an appeal. In this situation, the appellants panel will consider and review both appeals together.

In considering the appeal, the appellate panel will be given the Notice of Appeal form, any and all documents provided at the Pre-Decision Conferences, including but not limited to the statements from the Complainant and Respondent, the investigative report, the supplemental investigative report (if any), and any other documentation provided to the Panel at the time they made their decision. The appellate panel will receive the Adjudication Panel's outcome letter as well as the Senior Associate Dean of Student's letter outlining the sanction and rationale. Additionally, the appellate panel will receive any response received from the opposing party by the Title IX Coordinator within the allotted two (2) day timeframe. The appellants panel may consult with the Panel Chair regarding questions of process and with the Senior Associate Dean of Students/Director of Student Conduct regarding questions of appropriateness of the sanction(s).

Appeals shall be submitted based on the student's ability to demonstrate that one or more of the grounds listed below for appeal are meritorious:

- *Procedural Error*: The Appellant alleges that there was a deviation or change from the procedures outlined in the Sexual Misconduct Adjudication Process and that deviation had an adverse impact on the outcome of the complaint against the appellant. If the appellate panel determines that there was a procedural error which

would have altered the outcome of the case, the appeal will be submitted to the original decision making panel for a determination regarding the impact of the procedural error on the outcome of the complaint.

- *New Information:* The Appellant alleges that, subsequent to the issuing of the Panel's decision, new information became available which would have impacted the outcome of the disciplinary complaint. The Appellant must: (i) present the new information; (ii) show why it was unavailable prior to the Panel's decision; and (iii) show that the new information would have altered the outcome of the complaint. If the appellate panel determines that there is new information that meets these three (3) requirements, the appeal will be submitted to the original Panel for review in light of new information. At the original Panel's discretion, additional investigation of the new information can be requested.
- *Severity of The Disciplinary Action:* The Appellant alleges that the disciplinary action issued by the Senior Associate Dean of Students/Director of Student Conduct is unduly harsh or lenient. If the Appeals Panel determines that that disciplinary action was unduly harsh or lenient, it will remand the matter to the Senior Associate Dean of Students/Director of Student Conduct for reconsideration. The decision of the Senior Associate Dean of Students/Director of Student Conduct after reconsideration is final.

The foregoing are the only grounds for appeal.

The appeals process will usually be completed within **fifteen (15) days** of filing the Notice of Appeal. In the event that the appeals process exceeds the fifteen (15) day time frame, the Title IX Coordinator will advise all parties in writing of the delay and offer an explanation.

A written decision will be rendered by the Chief of Staff or designee and will be provided to each party by either being mailed to the parties at their local addresses (or another address if a student has no local address) or emailed to the parties at the email addresses that the College has provided the students (or another email address a student has provided the College). The outcome of the appeal is final.

12. Concerns about the Implementation of these Grievance Procedures

The College has appointed Melissa Kelley as the Title IX Coordinator to oversee all aspects of the College's Title IX compliance efforts. An individual who believes that any aspect of this policy has not been properly followed should contact the Title IX Coordinator at 518.388.6865 or kelleym2@union.edu. Retaliation against any person who files a complaint of alleged discrimination is prohibited.

13. Integrity of Process

These procedures are entirely administrative in nature and are not considered legal proceedings. As there will be an official recording of the hearing, neither party may make an audio or video recording of the proceedings. No computers, cell phones, or other electronic means of communication are allowed to be used by the Complainant, Respondent, advisors, or a witness.

14. Conclusion of Case

At the conclusion of the Sexual Misconduct Adjudication Process, all materials created by or reviewed by the Panel(s) will be retained by the Title IX Coordinator and/or the Dean of Students Office. Regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution. Complaints resolved by means of Title IX assessment or informal resolution are not part of a student's conduct file or academic record.

Affirmative findings of responsibility in matters resolved through Panel adjudication are part of a student's conduct record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record.

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the Clery Act, Union College shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the Respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they "withdrew with conduct charges pending."

An appeal in writing may be submitted to the Dean of Students seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension. While notations for expulsion shall not be removed, if a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

The conduct files of all students, including those who have been suspended or expelled from the College, are maintained in the Title IX Coordinator and Dean of Students Office for no fewer than **seven (7) years** from the date of the incident.

Further questions about record retention should be directed to the Title IX Coordinator or the Dean of Students Office.