



Appendix C
Resolution of a Complaint against an Employee

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As outlined in the Union College Sexual Misconduct Policy, an individual who wishes to make a report of sexual misconduct or other prohibited conduct is encouraged to make a report directly to the Title IX Coordinator or Campus Safety. Additionally, employees are encouraged to report such conduct to their immediate supervisor or directly to Human Resources. In every instance under this policy, the College, through the coordinated efforts of the Title IX Coordinator and the Title IX Team (typically, the Director of Campus Safety and a designee from Human Resources), will conduct an initial Title IX Assessment and will make an immediate assessment of imminent risk to the individual or the campus community and respond accordingly.

The adjudication/resolution process is intended to be prompt, fair and impartial and will provide for disciplinary action, as appropriate. This 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 Title IX Coordinator, Human Resources and/or other appropriate administrator who will explain the process and options available.

The Title IX Coordinator, Human Resources or administrator may seek to resolve certain sexual misconduct complaints through an informal process involving both the complainant and accused. (For example, a complainant and respondent may agree with the title IX Team that education and training for the respondent are an appropriate and sufficient conclusion). If, based on the information provided about the incident, the Title IX Team believes such a resolution is possible and appropriate, they will speak with the complainant. If the complainant agrees, the team will then speak with the respondent. If both the complainant and respondent are satisfied with a proposed resolution and the offices believes the resolution satisfies the College's obligation to provide a safe and nondiscriminatory environment for all, 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 Title IX Coordinator 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 Title IX Coordinator will maintain records including any forms, 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. Formal Resolution

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 employee, may file a complaint against the person responsible for that conduct. Complaints should be filed with the Title IX Coordinator:

Dr. Melissa Kelley, Title IX Coordinator
(518) 388-6865
kelleym2@union.edu
403E Reamer Campus Center

1. Filing a Complaint

The individual bringing the allegation is called the complainant. The complainant will be asked to submit three forms: the Complaint Form, Complainant's Statement, and a Limited Disclosure/Non-Retaliation Acknowledgement to initiate the disciplinary complaint. The complainant's forms should be signed, dated, and submitted to the Title IX Coordinator.

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 employed at the College. Please note that the College only has jurisdiction over employees when they are employed.

The College reserves the right to initiate resolution of a complaint immediately to protect the interests and safety of the College community.

In instances where a complaint is received regarding a respondent no longer employed by Union College, guidance about filing an external complaint will be provided to the complainant.

a. Complaint Form and Complainant's Statement

For a complainant to file a complaint against an employee, the complainant must submit the following two documents.

The Complaint Form is a document that will contain basic information about the complaint made against the respondent, such as the time, date, location, and brief description of the allegations underlying the complaint. This Complaint Form must contain sufficient detail to permit a reasonable person to understand the allegations being brought forward and to be able to adequately respond. The respondent will be given access to the Complaint Form prior to filing a written response statement.

The Complainant's Statement is a written statement detailing the allegations of the sexual misconduct. This statement is the 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 the outcome, 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 Title IX Coordinator or assigned 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 Complaint Process. Once submitted, the Complainant's Statement may not be amended, but it may be supplemented through interviews with the title IX Coordinator, Investigator(s), or Human Resources. 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.

b. Limited Disclosure/Non-Retaliation Acknowledgment

The complainant will be required to sign a Limited Disclosure/Non-Retaliation Acknowledgment, agreeing to limit disclosure of or discussion of anything relating to the disciplinary complaint with anyone other than those involved with this process. The complainant will still be able to discuss the facts underlying the subject of the disciplinary complaint with attorneys, counselors, clergy, physicians, other therapeutic professionals and family. The complainant should refrain from discussing the complaint itself and/or the process with anyone affiliated with Union College. This 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, as addressed in the Union College Sexual Misconduct Policy and may be responsible for any retaliation by persons affiliated with the complainant (i.e. a friend or family member).

2. *Administrative Complaint*

Union College may independently initiate a disciplinary complaint against an employee under this policy pursuant to a complaint called an "Administrative Complaint." In this type of complaint, the College will act as the complainant in the adjudication of a sexual misconduct complaint against an employee. Such complaints will proceed under the processes outlined in this policy and may result in disciplinary action.

3. *Responding To a Complaint*

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

a. Initial Meeting/Limited Disclosure/Non-Retaliation Acknowledgment

Within **five (5) days** of receiving notice of the complaint, the respondent must meet with the Title IX Team.

At this meeting, 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 complaint process and give the respondent a copy of the relevant policies. Prior to reviewing the Complaint Form, the respondent will be required to sign a Limited Disclosure/Non-Retaliation Acknowledgment, agreeing to limit disclosure of or discussion of anything relating to the disciplinary complaint with anyone other than those involved with this process. Through this Acknowledgment, the respondent also agrees to refrain from any retaliatory conduct against the complainant or any witnesses in the matter, as addressed in the Union College Sexual Misconduct Policy and may be responsible for any retaliation by persons affiliated with the respondent (i.e. a friend or family member). Refusal/failure by the respondent to meet and cooperate with the Title IX Team or Investigator(s) regarding this matter or to sign the Limited Disclosure/Non-Retaliation Acknowledgment, as determined by the Vice President for Human Resources, may result in either or both: (1) an automatic suspension or separation of the respondent from the College and/or (2) the resolution of the complaint without input from the respondent.

b. Pre-Fact-Finding Resolution of Complaint/Acceptance

After meeting with the Title IX team and reviewing the Complaint Form, the respondent has the right to end the process by signing a document 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 further. Instead, the matter would be referred to Human Resources or appropriate administrator to decide the appropriate disciplinary action against the respondent.

Human Resources may take the respondent's acceptance of responsibility into consideration in determining the appropriate response. However, 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 Human Resources, which will become part of the respondent's personnel records. 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.

c. Respondent's Statement

The respondent 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 between the respondent and 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 outcome, 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 College 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 Process. Once submitted, the Respondent's Statement may not be amended, but it may be supplemented through interviews with the Investigator(s) or Title IX Team. 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.

C. Fact Finding Investigation

After both parties have submitted their statements, the Title IX team may choose to initiate a Fact-Finding Investigation, utilizing the College's neutral investigators. It is at the discretion of the Title IX team to initiate such process.

Complainant and Respondent (and their Advisors) in an investigation will have access to any investigative reports, witness accounts, or other documents produced during an investigation. The Title IX Coordinator and/or Human Resources designee may redact information that is irrelevant, more prejudicial than probative, or immaterial. They 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.

D. Resolution of Formal Complaint

After completion of the fact-finding investigation, both the Complainant and Respondent will be provided the opportunity to review the final investigative report. This document review will take place within 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 Title IX Coordinator by the respective parties within two (2) days of reviewing the document(s). The Title IX Coordinator will notify both parties should there be any changes within two (2) days of receipt of written notification from either party. The Title IX Coordinator will provide a copy of the final investigative report to the Title IX Team.

The Title IX Team will evaluate the results of the investigation and make a decision based upon the preponderance of evidence standard. The Title IX Team is tasked with determining a finding of Responsible or Not Responsible. This finding is based on the Respondent and Complainant Statements, witness accounts, any evidence or materials presented and the investigative report. Additionally, the Title IX Team, in making its finding, has the right to speak with the Investigators. If a finding of Responsible is determined, the Title IX Team will determine appropriate disciplinary measures. The Title IX Team will meet with the complainant and respondent separately to share the determination of responsibility.

Upon a finding of proscribed conduct, disciplinary measures, including but not limited to those listed below, may be imposed. The Title IX Team will determine appropriate disciplinary measures in consultation with Human Resources.

- *Educational Programs*

Requirement that the respondent take part in a required educational program on or off campus. The Title IX Team may require respondent to participate in an online educational program that addresses particular issues.

- *Suspension/Separation*

Permanent or temporary separation from the College.

- *Interim Restrictions*

Imposition on an interim basis of any restrictions.

- *Loss of Privileges*

Denial of specified privileges for a designated period of time.

- *Physical Restrictions*

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

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

E. Outcome Letter

The outcome of the resolution will be final and communicated to the complainant and respondent in writing, usually within **seven (7) days** from the date the assessment 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 disciplinary measures will take effect immediately and will not be stayed pending the resolution of the appeal.

F. Appeals

Both the complainant and respondent are entitled to appeal the 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:

Dr. Melissa Kelley
Title IX Coordinator
Reamer 403E
[Kelleym2@union.edu](mailto: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 decision was wrong. The complainant and respondent may appeal the decision based only upon the grounds outlined below with respect to the each of the violation(s) found to have occurred. Appeals are considered by the appropriate Vice President or Senior Staff Member in consultation with the Title IX Coordinator. 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 officer. In some situations, both the complainant and the

respondent may file an appeal. In this situation, the appellant officer will consider and review both appeals together.

In considering the appeal, the appellate officer will be given the Notice of Appeal form, any and all documents including but not limited to the statements from the complainant and respondent, the investigative report, and any other documentation provided to the Title IX Team at the time they made their decision. The appellate officer will receive the outcome letter as well as the sanction and rationale. Additionally, the appellate officer will receive any response received from the opposing party by the Title IX Coordinator within the allotted two (2) day timeframe. The appellant officer may consult with the Title IX Team.

Appeals shall be submitted based on the one'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 officer 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 body 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 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 decision; and (iii) show that the new information would have altered the outcome of the complaint. If the appellate officer determines that there is new information that meets these three (3) requirements, the appeal will be submitted to the original administrative team for review in light of new information. An additional investigation of the new information can be requested.
- *Severity of The Disciplinary Action*: The Appellant alleges that the disciplinary action issued by Human Resources is unduly harsh or lenient. If the appellate officer determines that that disciplinary action was unduly harsh or lenient, it will remand the matter to the appropriate administrator for reconsideration. The decision of the Vice President of Human Resources 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 appropriate Vice President or designee and will be provided to each party. The outcome of the appeal is final.

G. Concerns about the Implementation of these Grievance Procedures

The College has appointed a Title IX Coordinator, Melissa Kelley, 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 kelley2@union.edu). Retaliation against any person who files a complaint of alleged discrimination is prohibited.

H. Integrity of Proceedings

These procedures are entirely administrative in nature and are not considered legal proceedings.

I. Records

The Title IX Coordinator and Human Resources will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Title IX assessment, informal, or formal resolution.

Affirmative findings of responsibility in matters resolved through formal resolution are part of an employee's personnel file. Further questions about record retention should be directed to the Human Resources Office.