



Appendix B  
Resolution of a Complaint against a Faculty Member

## Appendix B: Resolution of a Complaint Against a Faculty Member

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Based on federal law, specifically Title IX and the Violence Against Women Act (VAWA), accompanying federal regulations, and guidance issued by the U.S. Departments of Education and Justice, and Article 129-B of the New York State Education Law, the following procedures apply in cases where a formal complaint of a violation of the College's Sexual Misconduct Policy has been interposed against a Faculty member (available at: <http://www.union.edu/titleix>). These procedures supersede those described in the Union College's Procedures for Dismissal and Sanctions found in the Faculty Manual.

Union College will investigate reports of Sexual Misconduct to the extent appropriate and possible. Investigation and resolution of all reports made under this Policy will be conducted in a prompt and equitable manner by individuals who have received appropriate training. Resolution will typically be completed within **60 days**. This time frame may be extended at the sole discretion of the Title IX Coordinator.

The complainant and respondent are entitled to rights set forth under the Bill of Rights section of the Sexual Misconduct Policy.

### *A. 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 Faculty member, may file a complaint against the Faculty member responsible for that conduct. Complaints may be filed with the Title IX Coordinator, Campus Safety, or the Dean of Academic Departments and Programs, who are also known collectively as the Title IX Team.

### *B. 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 Dean of Academic Departments and Programs and Title IX Coordinator to discuss Informal Resolution, attend conduct conference, and/or appearances before a Faculty Hearing Board as defined above. The Advisor is permitted to provide the complainant or respondent advice during these meetings at appropriate times when the person being advised is not giving testimony or 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 Dean of Academic Departments and Programs, Title IX Coordinator, or Faculty Hearing Board. 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.

***C. Informal Resolution***

Either the complainant or respondent may request the opportunity to pursue an informal resolution by providing written notice to any member of the Title IX Team. Participation of both the complainant and respondent in informal resolution is voluntary. The goal of informal resolution is to provide a forum where the complainant and respondent can, with the aid of the Title IX Team, come to a mutually agreed upon resolution. If a mutually agreed upon resolution is not reached or either party chooses not to engage in informal resolution, either of the parties may invoke the formal resolution process. If a mutually agreed upon resolution is reached, the Title IX Coordinator or Dean of Academic Departments and Programs, will notify the complainant and respondent in writing of the outcome. All records will be forwarded to the Vice President for Academic Affairs with a copy to the Title IX Coordinator.

The College reserves the right to consider whether informal resolution may be used to resolve allegations of sexual assault.

***D. Formal Resolution***

Either the complainant or respondent may invoke the formal resolution process by providing written notification to the Title IX Coordinator. The College may also, either before or after conducting an investigation, independently invoke the formal resolution process pursuant to an Administrative or Dean's Complaint wherein the College will act as the complainant in the adjudication of a sexual misconduct complaint against a Faculty member. Such complaints will proceed under the processes outlined in this policy and may result in disciplinary action.

***1. Formal Complaint***

To initiate a formal complaint, the complainant must submit two forms (Complaint Form and Complainant Statement) to the Title IX Coordinator. The Complaint Form contains:

- The name of the respondent, if known;
- A description of the alleged sexual misconduct; and
- The date, approximate time, and location of the alleged violation, if known.

The Complainant Statement should communicate the complainant's full account of the event and its context and must be written by complainant. If a complaint is submitted to the Title IX Coordinator, the Dean of Academic Departments and Programs and Vice President for Academic Affairs will receive a copy of the complaint.

The Title IX Coordinator will provide the complainant with a copy of this Policy, the Complaint Form, and Complainant Statement (found on the Title IX website); review procedures; and inform the complainant of available resources, support services, and options, including the option to be assisted by an Adviser of his/her choice.

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### *2. Limited Disclosure/ Non-Retaliation Acknowledgment-The Parties*

Both parties and Advisors, when meeting with the Title IX Coordinator, will be required to sign a Limited Disclosure/Non-Retaliation Acknowledgment, agreeing to limit disclosure of or discussions about anything relating to the disciplinary complaint with anyone other than those involved with this process. Both parties and Advisors 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. Both parties and Advisors should refrain from discussing the disciplinary complaint itself and/or the adjudication 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, both parties and Advisors also agree to refrain from any retaliatory conduct against the other party or any witnesses in the matter and may be responsible for any retaliation by persons affiliated with the party (i.e. a friend or family member).

### *3. Responding to a Formal Complaint*

The Title IX Team will meet with the respondent to notify the respondent that a complaint has been filed and will be investigated. The Title IX Coordinator will provide the respondent with the Complaint Form and a copy of this Policy, review procedures, and inform the respondent of available resources, support services, and options, including the option to be assisted by an Adviser of his/her choice.

### *4. Respondent Statement*

The respondent will be asked to provide a written response to the information contained in the complaint using the Respondent Statement form provided by the Title IX Coordinator (found on the Title IX website). The Respondent Statement must be submitted to the Title IX Coordinator within seven (7) days after the meeting between the respondent and the Title IX Team. The Respondent Statement will be given to the complainant. At that time, respondent will be given a copy of the Complainant Statement.

### *5. Pre-Fact-Finding Resolution of Complaint/Acceptance*

After meeting with the Title IX Team and reviewing the complaint, the Respondent has the right to end the Sexual Misconduct Adjudication Process by signing a document accepting responsibility for the conduct alleged in the complaint and forwarding the same to the Title IX Coordinator or the Dean of Academic Departments and Programs. The Complainant will be notified in writing by the Title IX Coordinator and will have the opportunity to submit an impact statement to the Title IX Coordinator to be submitted to Faculty Hearing Board upon being convened. Once the Respondent accepts responsibility, such acceptance cannot be withdrawn. If the Respondent accepts responsibility for the conduct alleged in the complaint, the process would not proceed to the Fact Finding Investigation phase. Instead, the matter would be referred to the Faculty Hearing Board, convened by the Vice President for Academic Affairs, to decide the issue of the appropriate disciplinary action against the respondent.

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The Faculty Hearing Board may take the respondent's acceptance of responsibility into consideration in recommending the appropriate sanction to the Vice President for Academic Affairs. A written finding of the acceptance of responsibility and the sanction(s) will be issued by the Vice President for Academic Affairs, which will become part of the respondent's employment records and the outcome will be shared with the complainant. All records will be forwarded to the Vice President for Academic Affairs with a copy to the Title IX Coordinator.

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.

### *6. Administrative Determination*

If the Vice President for Academic Affairs determines that a finding of responsibility on the facts as alleged would likely result in a minor sanction, the Vice President for Academic Affairs will thereafter conduct whatever additional investigation the Vice President for Academic Affairs deems appropriate in order to reach a final disposition. (If at any point the Vice President for Academic Affairs determines that a severe sanction is likely, the Vice President for Academic Affairs will convene the Faculty Hearing Board. For purposes of this Policy, a minor sanction is that which does not impair essential professional duties, such as a letter of reprimand or a financial penalty less than the lesser of \$1,000 or 1% of the annual salary in a one-year period.

If the Vice President for Academic Affairs determines by a preponderance of the evidence that the respondent is responsible for a violation of this Policy, the Vice President for Academic Affairs will issue the appropriate sanction.

The Vice President for Academic Affairs will communicate the outcome in writing to both parties (with a copy to the Title IX Coordinator) to the extent that it is required under federal law.

### *7. Investigative Report*

If the Vice President for Academic Affairs determines that a finding of responsibility on the facts as alleged would likely result in a severe sanction, will proceed before the Faculty Hearing Board. First, however, the Vice President for Academic Affairs will consult with the Chair and Secretary of the Faculty Executive Council and the Title IX Coordinator to determine whether, in their opinion, such a hearing is appropriate (without this opinion being binding upon the Vice President for Academic Affairs). Before the convening of the Faculty Hearing Board, a formal investigation will be completed. The Investigator(s), who may be internal or external to the College, with input from the Title IX Coordinator, Campus Safety, and the Dean of Academic Departments and Programs, will conduct an investigation and prepare an investigative report, which may be accompanied by supporting documentation or items (for example, statements, photographs, etc.).

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### *8. Information*

Information relevant to the alleged violation(s) or defenses thereto may be presented at the hearing. Statements concerning a party's character do not constitute relevant information to be presented.

### *9. Prior 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.

### *10. 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:

Please note that if a party decides to produce records pertaining to an incident, they must be produced in their entirety. The production of excerpts or selected documents is inappropriate and will not be considered. The Complainant or Respondent shall identify and make available to the Investigator other medical or counseling records and HIPPA authorizations as the Investigator requests in an effort to assess the relevancy of such other documents.

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 provided

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in accordance with above. 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.

### *11. 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.

Both the complainant and respondent shall have an opportunity to submit experts' reports as part of the investigative process. If neither party submits an expert's report prior to his or her review of the final investigative report, no expert's report will be considered by the adjudication panel. If only one party timely submits an expert's report, the other party will have ten (10) calendar days to submit a responsive expert's report. Experts' reports must be subscribed before a notary public. Experts' reports from physicians duly licensed to practice in the state of New York can, as an alternative, be affirmed as true under penalty of perjury. Any expert authoring a report submitted as part of the investigative process must make him/herself reasonably available to speak with any of the investigator(s) conducting the fact-finding investigation. Should such expert not make him/herself reasonably available, the investigator(s) need not compile such report as part of the final investigative report. All expenses of an expert, including expenses incurred when speaking with any investigator of the College, shall be borne by the party proffering the expert's report. The investigator(s) compiling the final investigative report shall have the discretion to exclude from such report any expert's report that such investigator(s) determines to be irrelevant to any of the issues raised by the complaint.

***E. Disciplinary Proceedings-Formal Hearing***

The Title IX Coordinator will inform the parties in writing of the date, time and place of a hearing, the alleged violations that will be presented in the hearing, and the names of those who are serving as the Faculty Hearing Board.

*1. Faculty Hearing Board*

The Faculty Hearing Board shall consist of the members of the Faculty Executive Committee (FEC) except for the Chair and Secretary of the FEC.

Faculty Hearing Board members (as defined above) are required to keep the information learned in preparation for the hearing and at the hearing confidential. No copies of documents provided are to be made or shared with any third parties. All copies provided must be returned to the Title IX Coordinator, or deleted if provided in electronic form, at the conclusion of the hearing or, if applicable, the appeal. The Title IX Coordinator will advise when materials are to be returned or deleted.

The Faculty Hearing Board may consult with College Counsel at any time; however, if the complaint is brought administratively (that is, the College is the complainant, see Administrative or Dean's Complaint below), the Faculty Hearing Board may consult with outside counsel.

Each party shall have an opportunity to challenge the Faculty Hearing Board members for bias or conflict of interest. The challenge must be rooted in a specific bias or conflict of interest (e.g., the proposed the Faculty Hearing Board member is someone with whom a party has had a previous documented conflict or relationship that would create bias) rather than a general objection or an objection based upon a protected characteristic (race, religion, gender, etc.). A challenge must be made in writing to the Vice President for Academic Affairs within two (2) days of notification of the composition of the Faculty Hearing Board. The Vice President for Academic Affairs shall determine whether a Faculty Hearing Board member will be removed for possible bias or conflict of interest.

If a Faculty member wishes to recuse him-/herself, he/she may consult with the Vice President for Academic Affairs who will determine if recusal is appropriate. If a member of the Faculty Hearing Board is recused, the Vice President for Academic Affairs shall appoint a replacement.

*2. Prior to Formal Hearing*

The Faculty Hearing Board will review the Investigative Report with the Dean of Academic Departments and Programs and the Title IX Coordinator and will determine which witnesses, documentation, and other information will be called or presented at the hearing. No later than five (5) days prior to the hearing, the Title IX Coordinator

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will provide the parties with a copy of the Investigative Report, the list of witnesses, and any other information that will be presented at the hearing.

No later than three (3) days prior to the hearing, the parties may request that additional witnesses, supporting documentation, or other information be presented at the hearing. The request must be in writing, submitted to the Title IX Coordinator, and include a brief description of why the information is relevant to the determination of responsibility. The parties may not introduce witnesses, documentation, or other information at the hearing that were not provided to the Title IX Coordinator by this deadline. Exceptions may be made at the sole discretion of the Faculty Hearing Board if the identity of the witness or the documentation or other information was not available to the Party as of this deadline or for other extenuating circumstances.

The Title IX Coordinator has sole discretion to alter the time frames provided in this Policy for good cause and with written notice of the delay and reason for delay to be reasonably provided to the parties.

Prior to the hearing, the Title IX Coordinator and Dean of Academic Department and Programs will offer to meet with each party to review hearing procedures, the alleged violation(s), and the list of witnesses and other information that will be presented at the hearing. At this meeting, a party may request alternative testimony options that would not require physical proximity of the other party. Any proposed alternative must be reviewed in advance of the hearing to ensure that it is consistent with the goals of a fair and equitable process. While these options are intended to help make the complainant or respondent more comfortable, they are not intended to work to the disadvantage of the other party.

The Title IX Coordinator will forward a copy of the alleged violation(s), the Investigative Report, the final list of witnesses, and any other information that will be presented at the hearing to the Faculty Hearing Board in advance of the hearing.

### *3. Statements Relevant to Sanctioning*

On or before the day of the hearing, the respondent may submit a written statement relevant to sanctioning and the complainant may submit a written impact statement for consideration by the Faculty Hearing Board. The statement must be provided to the Title IX Coordinator in a sealed envelope. The statements will be read by the Faculty Hearing Board only if it has found the respondent responsible. If the Faculty Hearing Board does not find the respondent responsible, the envelopes will be destroyed, unopened, by the Title IX Coordinator.

### *4. Faculty Hearing Board Procedures*

The Faculty Hearing Board is a closed hearing. It is not open to the public. The individuals who may appear before the Faculty Hearing Board are the Title IX Coordinator, Investigator(s), and any individuals appearing as witnesses. College Counsel may be consulted during the hearing. Before and after giving testimony, witnesses may be excluded from the room or building where the hearing occurs.

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A hearing is not intended to be adversarial. It is intended to provide a fair and ample opportunity for each side to present his/her account of the incident and for the Faculty Hearing Board to determine the facts of the case, make a determination as to whether College policy was violated, and to recommend appropriate sanctions, if necessary. The hearing is an informal proceeding not comparable to a criminal or civil trial; it is the mechanism by which the College assesses a charged violation, and as appropriate, takes formal disciplinary action regarding a violation of College policy.

All parties involved in a hearing are required to keep the information learned in preparation for the hearing and at the hearing private. No copies of documents provided are to be made or shared with any third parties. 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.

Notes may be taken by the participants in the hearing solely for their personal use. There will be a single verbatim recording or transcription made of the hearing which shall be the sole property of the office of the Vice President for Academic Affairs. The recording or transcript will be available only for review by the complainant, respondent or the College in the office of the Vice President for Academic Affairs for the purpose of review in connection with an appeal.

The Faculty Hearing Board must review the Investigative Report containing all pertinent information regarding the incident in question prior to the Faculty Hearing Board hearing. Relevant information supporting the violation(s) alleged may be offered in the form of written statements, documents, items, or oral information from the complainant, the respondent, and witnesses.

### a. Call to Order

A hearing will be called to order by the Faculty Hearing Board Chair. The Chair will orally explain the hearing process and will provide an opportunity for all parties to ask procedural questions prior to initial statements and the presentation of information.

The Chair of the Faculty Hearing Board will rule on matters of procedure and may preclude statements and questions that are redundant, irrelevant, or otherwise not allowed by the procedures of the College, as determined by the Chair. The Chair of the Faculty Hearing Board may also strike answers that provide such redundant, irrelevant, or impermissible information. Statements at the hearing need not be made or submitted under oath.

### b. Summary by Investigators

The Investigator(s) will provide a summary of the investigation. This summary should include a focus on the areas of agreement and disagreement in order to assist the Faculty Hearing Board in prioritizing areas of inquiry. The Faculty Hearing Board, complainant, or respondent may make inquiries of the Investigator(s) at this

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juncture, and there will be additional opportunity to ask questions of the Investigator(s) after the Faculty Hearing Board has heard from the complainant, the respondent, and any witnesses.

### c. Brief Statement by Complainant

The complainant may supplement the information provided to the Faculty Hearing Board with a brief statement. This is not intended to be a retelling of the event. The Faculty Hearing Board may pose questions to the complainant, including a written list of questions suggested by the respondent and forwarded to the Faculty Hearing Board in advance of the hearing.

### d. Brief Statement by Respondent

After the complainant is finished, the respondent will be given an opportunity to make a brief statement. This is not meant to be a retelling of the event. The Faculty Hearing Board may pose questions to the respondent, including a written list of questions suggested by the complainant and forwarded to the Faculty Hearing Board in advance of the hearing.

### e. Witnesses

The Faculty Hearing Board may hear from witnesses, including those allowed to present information, on behalf of the complainant and the respondent. Each witness will be questioned by the Faculty Hearing Board, and, as appropriate, the complainant and the respondent.

### f. Questioning of Witnesses, Complainant, and Respondent

It is the responsibility of the Faculty Hearing Board to assure that the information necessary to make an informed decision is presented. The Faculty Hearing Board members may play an active role in questioning both parties and witnesses involved in the case. At times, the Faculty Hearing Board members may need to ask difficult or sensitive questions in order to understand areas of factual dispute or gain a full understanding of the context.

The complainant and the respondent may not directly question one another. As outlined above, the parties may submit questions to the Faculty Hearing Board in writing, which may be posed at the discretion of the hearing panel. Similarly, the Faculty Hearing Board members are under no obligation to allow either party to directly question witnesses, and the Faculty Hearing Board may require that questions to witnesses be submitted in writing.

Parties and other individuals who offer information at a hearing are expected to respond honestly, and to the best of their knowledge. The Faculty Hearing Board reserves the right to recall any party or witness for further questions and to seek additional information necessary to make a decision.

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### g. Additional Questioning of Investigators

The Faculty Hearing Board, complainant, and respondent may then question the Investigator(s) again. As with all questioning, the Faculty Hearing Board Chair may preclude or limit questions that are redundant, irrelevant, or otherwise not allowed by the procedures of the College, as determined by the Chair. The Investigator(s) is not permitted to offer an opinion as to the ultimate issue.

### h. Complainant and Respondent Address Outstanding Issues

At the conclusion of the presentation of all witnesses, the complainant and respondent will each be given a brief final opportunity to address any outstanding issues of fact and submit additional written questions to the Chair. The Chair, in consultation with the Faculty Hearing Board will determine the appropriateness and relevance of the questions as well as whether any question is redundant or should have been presented earlier in the hearing.

### i. Deliberation

After all of the information has been presented, all parties will be dismissed and the hearing will be formally concluded.

The Faculty Hearing Board members will conduct their deliberations in private. The Faculty Hearing Board will normally complete their deliberations within three (3) days, but every attempt will be made to complete the deliberations promptly.

The Faculty Hearing Board will determine a respondent's responsibility by a preponderance of the evidence. This means that the Faculty Hearing 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 Faculty Hearing Board must reach a decision on responsibility by majority vote.

### j. Sanctions and Impact Statements

If the Faculty Hearing Board that finds a respondent responsible for a violation of this Policy, it may consider the impact statement of the complainant and statement of the respondent relevant to sanctioning, if submitted, and 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. Possible sanctions may include:

- *Educational Programs*

Requirement that the respondent take part in a specified educational program on or off campus. The Faculty Hearing Board may recommend a sanction that requires respondent to participate in an online educational program that addresses particular issues.

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- *Probation*  
The next violation is likely to result in Dismissal.
- *Physical Restrictions*  
A directive given to the respondent that does not permit him/her to be in specified locations on College Premises.
- *Suspension Without Pay*
- *Dismissal*  
Dismissal from the College. If the sanction recommended is dismissal or termination of appointment, the President shall inform the Board of Trustees for final action based upon the recommendation of the President.

### k. Outcome

The Faculty Hearing Board will communicate its determination of responsibility and, if applicable, recommended sanctions to the President (with a copy to the Vice President for Academic Affairs and the Title IX Coordinator). The determination will detail the findings of fact and the basis/rationale for the decision of the Faculty Hearing Board, making reference to the evidence that led to the finding. The President will have access to the record of the hearing, including the investigative report, other documentation, and the audio recording or transcript of the hearing. In rendering a final decision, the President may accept or modify the Faculty Hearing Board's determination of responsibility and, if applicable, accept or modify the recommended sanctions. The President will communicate the final decision in writing, the findings of fact, decision, rationale for the decision, and sanctions (if any) to both parties (with a copy to Vice President for Academic Affairs and the Title IX Coordinator) usually within seven (7) days from the date the hearing is concluded, to the extent that is required federal and state law. The notification of each party should occur at or near the same time.

### ***F. Appeals***

The point of an appeal is not to provide complainant and/or respondent with a new hearing nor is it intended to provide complainant and/or respondent with the opportunity to simply declare that the President's decision was wrong. The complainant and respondent may appeal the decision of the President based only upon the grounds outlined below with respect to the each of the violation(s) found to have occurred. The party filing the appeal is the Appellant. Appeals of hearing decisions must be submitted to the Executive Committee of the Board of Trustees ("Appeals Panel") in writing within ten (10) days of written notification of the President's decision. The imposition of sanctions remain in effect during the period of the appeal proceedings.

The opposing party will be notified that an appeal been filed and receive a copy of the appeal. The opposing party may submit a written response to the appeal within two (2)

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days of receiving the notice of the appeal. In some situations, both the complainant and the respondent may file an appeal. In this situation, the Appeals Panel will consider and review both appeals together.

The Appeals Panel may review all materials presented at the hearing, the recording or transcript of the hearing, the Faculty Hearing Board's determination of responsibility and (if applicable) recommended sanction(s), and the President's decision; and may consult with the Chair of the Faculty Hearing Board on questions of judicial procedure and with the President on questions of appropriateness of the sanction(s). The Appeals Panel standard of review will be based upon "substantial evidence" defined as follows: was there sufficient evidence to support the finding / action below.

Appeals shall be submitted based on the party'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 Policy which adversely impacted the outcome of the matter. If the Appeals Panel determines that there was a procedural error which likely altered the outcome of the case, the matter will be remanded to the Faculty Hearing Board for a determination regarding the impact of the procedural error on the outcome of the complaint. The Faculty Hearing Board's determination on whether there was an impact on the outcome of the complaint will be conveyed to the President who will make a final decision. The President will notify complainant and respondent in writing of the final decision, with a copy to the Appeals Panel, Faculty Hearing Board, Vice President for Academic Affairs, and Title IX Coordinator. All records will be forwarded to the Vice President for Academic Affairs with a copy to the Title IX Coordinator.
- *New Evidence*: The Appellant alleges that, subsequent to the issuing of the Faculty Hearing Board's decision, new evidence became available which would have impacted the outcome of the disciplinary complaint. The Appellant must: (i) present the new evidence; (ii) show why it was unavailable prior to the Faculty Hearing Board's decision; and (iii) show that the new evidence would have altered the outcome of the complaint. If the Appeals Panel determines that there is evidence that warrants a new hearing, it will remand the matter to the Faculty Hearing Board.
- *Severity of The Disciplinary Action*: The Appellant alleges that the disciplinary action issued by the President 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 President for reconsideration. The decision of the President after reconsideration is final. The President will notify complainant and respondent in writing of the final decision, with a copy to the Appeals Panel, Faculty Hearing Board, Vice President for Academic Affairs, and Title IX Coordinator. All records will be forwarded to the Vice President for Academic Affairs with a copy to the Title IX Coordinator.

The foregoing are the only grounds for appeal.

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The written appeal must specifically state the grounds under which the appeal has been filed. The appeal must set forth the information and evidence to support the appeal.

A written appeal decision will be rendered by the Chair of the Board of Trustees and 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), ordinarily within thirty (30) days of receipt of the appeal. A copy of the appeal decision will be conveyed to the President, Faculty Hearing Board, Vice President for Academic Affairs, and Title IX Coordinator.

The outcome of the appeal is final. All records will be forwarded to the Vice President for Academic Affairs with a copy to the Title IX Coordinator.

### ***G. Concerns about the Implementation of these Grievance Procedures***

The College has appointed a Title IX Coordinator at Union College, 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, Melissa Kelley, at [kelleym2@union.edu](mailto:kelleym2@union.edu) (518-388-6865). Retaliation against any person who files a complaint is prohibited.

### ***H. Integrity of Proceedings***

These procedures are entirely administrative in nature and are not considered legal proceedings. As there will be an official recording or transcription 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 during the hearing by the complainant, respondent, Advisors, or a witnesses.

At the discretion of the Faculty Hearing Board Chair, anyone disrupting the hearing may be removed.

### ***I. Records***

The Vice President for Academic Affairs will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution. Further questions about record retention should be directed to the Vice President for Academic Affairs.