



Appendix C  
Resolution of a Complaint against an Employee

## Appendix C: Resolution of a Complaint Against an Employee

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## Appendix C: Resolution of a Complaint Against an Employee

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 Reporting Party and accused. (For example, a Reporting Party and Responding Party may agree with the title IX Team that education and training for the Responding Party 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 Reporting Party. If the Reporting Party agrees, the team will then speak with the Responding Party. If both the Reporting Party and Responding Party 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 Reporting Party and Responding Party that each has the right to end the informal process at any time. **The College reserves the right to 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](mailto:kelleym2@union.edu)  
**403E Reamer Campus Center**

*1. Filing a Complaint*

The individual bringing the allegation is called the Reporting Party. The Reporting Party will be asked to submit three forms: the Complaint Form, Reporting Party's Statement, and a Limited Disclosure/Non-Retaliation Acknowledgement to initiate the disciplinary complaint. The Reporting Party'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 Responding Party 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 Responding Party no longer employed by Union College, guidance about filing an external complaint will be provided to the Reporting Party.

a. Complaint Form and Reporting Party's Statement

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

The Complaint Form is a document that will contain basic information about the complaint made against the Responding Party, 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 Responding Party will be given access to the Complaint Form prior to filing a written response statement.

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The Reporting Party's Statement is a written statement detailing the allegations of the sexual misconduct. This statement is the opportunity for the Reporting Party to describe the allegations against the Responding Party. The statement should communicate the Reporting Party's full account of the event and its context, as well as the Reporting Party's reflections. To facilitate the process, the Reporting Party 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 Responding Party'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 Responding Party's actions may have violated College policy or the Code of Conduct.

The Reporting Party's Statement should include the name of the Responding Party, 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 Reporting Party's Statement. This list should include information which the Reporting Party 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. Reporting Parties 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 Reporting Party's Statement is one of the most important documents to be considered in the sexual misconduct Complaint Process. Once submitted, the Reporting Party'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 Reporting Party.

It is unacceptable for a Reporting Party to submit a statement written by others, including parents, support persons, or attorneys. However, Reporting Parties 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-

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finder. The Reporting Party will be required to sign a statement verifying that he/she authored the Reporting Party's Statement.

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

### b. Limited Disclosure/Non-Retaliation Acknowledgment

The Reporting Party 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 Reporting Party 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 Reporting Party 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 Reporting Party also agrees to refrain from any retaliatory conduct against the Responding Party 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 Reporting Party (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 Reporting Party 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 Responding Party. The Responding Party 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 Responding Party must meet with the Title IX Team.

At this meeting, the Title IX Team will provide the Responding Party with a copy of the Complaint Form, discuss the nature of the Complaint, explain the rights and responsibilities of the Responding Party, explain the prohibition against

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retaliation, explain the complaint process and give the Responding Party a copy of the relevant policies. Prior to reviewing the Complaint Form, the Responding Party 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 Responding Party also agrees to refrain from any retaliatory conduct against the Reporting Party 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 Responding Party (i.e. a friend or family member). Refusal/failure by the Responding Party 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 Responding Party from the College and/or (2) the resolution of the complaint without input from the Responding Party.

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

After meeting with the Title IX team and reviewing the Complaint Form, the Responding Party has the right to end the process by signing a document accepting responsibility for the conduct alleged in the Complaint Form. If the Responding Party 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 Responding Party.

Human Resources may take the Responding Party's acceptance of responsibility into consideration in determining the appropriate response. However, once the Responding Party 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 Responding Party's personnel records. If the Responding Party does not wish to participate in this resolution process, then he/she will need to prepare a Responding Party's Statement as noted below. The Responding Party must decide whether he/she would like to utilize this resolution process before expiration of the **seven (7) days** for submitting the Responding Party's Statement.

### c. Responding Party's Statement

The Responding Party will be asked to provide a written response to the information contained in the Complaint Form. The Responding Party's Statement must be submitted to the Title IX Coordinator within **seven (7) days** after the meeting between the Responding Party and Title IX team. The Responding Party's Statement should contain the Responding Party's full recollection of the alleged incident. This statement is the Responding Party's opportunity to respond to the allegations made by the Reporting Party. The statement should communicate

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the Responding Party's recollection of the event and its context, as well as the Responding Party'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 Responding Party's Statement. That list should include information which the Responding Party 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. Responding Parties are advised to not attempt to obtain the information themselves. The College will solicit relevant statements or documents referenced through this process.

The Responding Party's Statement will be one of the most important documents to be considered in the Process. Once submitted, the Responding Party'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 Responding Party. It is unacceptable for a Responding Party to submit a statement written by others, including parents, support persons, or attorneys. However, the Responding Party 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 Responding Party will be required to sign a statement verifying that they authored the Responding Party's Statement. Once the Responding Party has submitted their statement, the Responding Party will be given a copy of the Reporting Party's Statement. The Reporting Party will also be given a copy of the Responding Party'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.

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Reporting Party and Responding Party (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 Reporting Party nor the Responding Party 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 Reporting Party and Responding Party 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 Reporting Party and the Responding Party 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 Responding Party and Reporting Party 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 Reporting Party and Responding Party 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 Responding Party take part in a required educational program on or off campus. The Title IX Team may require Responding Party to participate in an online educational program that addresses particular issues.

- *Suspension/Separation*

Permanent or temporary separation from the College.

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- *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 Responding Party 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 Reporting Party and Responding Party 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 Reporting Party and Responding Party are entitled to appeal the decision issued through the Sexual Misconduct Adjudication Process. The Reporting Party and Responding Party 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](mailto: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 Reporting Party and/or Responding Party with a new adjudication process nor is it intended to provide Reporting Party and/or Responding Party with the opportunity to simply declare that the decision was wrong. The Reporting Party and Responding Party may appeal the decision based only upon the grounds outlined

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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 remains 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 Reporting Party and the Responding Party 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 Reporting Party and Responding Party, 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.

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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 [kelleym2@union.edu](mailto:kelleym2@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.