

# Union College Title IX Policy

## TABLE OF CONTENTS

INTRODUCTION	4
I. PURPOSE AND SCOPE OF POLICY	5
A. STATEMENT OF INSTITUTIONAL VALUES	5
B. PURPOSE OF POLICY	5
C. SCOPE	7
II. COORDINATION WITH NON-DISCRIMINATION	9
A. COLLEGE STATEMENT ON PRIVACY AND CONFIDENTIALITY	9
B. ANTI-HARASSMENT POLICIES AND FREEDOM OF SPEECH / EXPRESSION	11
III. DEFINITION OF PROHIBITED CONDUCT UNDER TITLE IX	12
A. FORMS OF PROHIBITED SEXUAL HARASSMENT	12
Title IX Sexual Harassment:	12
B. STATEMENT ON AFFIRMATIVE CONSENT, COERCION, INCAPACITATION, AND ALCOHOL	15
C. CONSENSUAL SEXUAL RELATIONSHIPS BETWEEN EMPLOYEES AND STUDENTS	17
IV. RESOURCES AND SUPPORT MEASURES	18
A. OVERVIEW	18
B. CONFIDENTIAL RESOURCES	18
V. REPORTING	22
A. EMERGENCY/IMMEDIATE REPORTING OPTIONS	22
1. Reporting Resources	23
B. CAMPUS REPORTING OPTIONS	24
C. ANONYMOUS REPORTING	24
D. TIME FRAME FOR REPORTING	25
E. COORDINATION WITH LAW ENFORCEMENT	25
F. BYSTANDER INTERVENTION	26
G. STATEMENT AGAINST RETALIATION	26
VI. TITLE IX REVIEW	27

A.	ROLE OF THE TITLE IX COORDINATOR	27
B.	NOTICE/COMPLAINT	27
C.	INITIAL ASSESSMENT	28
D.	THREAT ASSESSMENT	30
E.	TIME FRAME FOR RESOLUTION	30
F.	EFFECT OF CRIMINAL PROCEEDINGS	31
G.	EFFECT OF PENDING COMPLAINT ON RESPONDENT	31
H.	COMMUNICATIONS	31
I.	FALSE COMPLAINT/FALSE INFORMATION	32
VII.	INITIATING A COMPLAINT	33
A.	INDIVIDUAL	33
B.	FILING REQUIREMENTS	33
1.	Where a Complainant Requests No Formal Complaint Be Pursued	34
VIII.	PROCEDURES FOR ADDRESSING COMPLAINTS WITHIN THE SCOPE OF TITLE IX	37
i.	Persons Involved in the Procedures for Addressing Complaints within the Scope of Title IX:	37
ii.	Evidentiary Considerations in the Investigation:	38
iii.	Joint Hearings:	38
iv.	Recording Hearings:	38
v.	Standard of Proof:	39
A.	SANCTION GUIDELINES	
B.	RULES OF DECORUM	
C.	NEW YORK STATE STUDENT’S BILL OF RIGHTS	
D.	OTHER PROVISIONS	40
1.	Amnesty for Minor Violations	40
2.	Attendance Expectations	40
3.	History of The Principle Parties	40
4.	Sexual History	40
IX.	TITLE IX COMPLAINTS AND CRIMINAL PROCEEDINGS	41
A.	REPORTING TO LAW ENFORCEMENT	41
1.	Criminal report may be made by:	41
2.	The College will not notify law enforcement when it receives a report of conduct prohibited by Title IX unless:	41
B.	INVESTIGATION AND EVIDENCE	41

X. PREGNANCY AND PARENTING

43

A. STUDENT RIGHTS

43

## **INTRODUCTION**

The Union College mission calls our community to provide “a rigorous, holistic, and immersive residential liberal education that emphasizes integration, innovation, inclusion, and reflection for every student.” To maintain an environment that is consistent with the mission and values of Union College, the College is committed to the prevention of and response to conduct prohibited by Title IX which interferes with the academic and/or professional experiences of any member of the Union College community. Consistent with this commitment, the College complies with Title IX of the Education Amendments of 1972 (“Title IX”), which prohibits the discrimination on the basis of sex in educational programs and activities, Title VII of the Civil Rights Act of 1964 (“Title VII”) which prohibits sex discrimination in employment, as well as relevant and applicable New York State laws pertinent to preventing discrimination in education and employment. The College also complies with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), as amended by provisions of the Violence Against Women Reauthorization Act of 2013 (“VAWA”).

The Title IX Policy protects students and employees against acts of sexual harassment on the basis of sex in College programs and activities as well as from retaliation for advocating for a right secured by the College’s Title IX Policy. This Policy applies to programs and activities such as recruitment, admissions, enrollment, financial aid and scholarships; course offerings and access; athletics; hiring and retention; benefits and leave; and in the provision of all services, programs, and activities. The College prohibits discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.

Sex and gender-based discrimination can be perpetrated by someone of any sex or gender and can occur between people of the same or difference sex or gender.

## **I. PURPOSE AND SCOPE OF POLICY**

### **A. STATEMENT OF INSTITUTIONAL VALUES**

Conduct prohibited by Title IX is a violation of a person's rights, dignity, and integrity. An act of conduct prohibited by Title IX represents a fundamental failure by a community member to recognize and to respect the intrinsic worth and dignity of another. Acts of misconduct are harmful to our community as a whole and will not be tolerated at the College. Such acts corrupt the integrity of the educational process, and are contrary to the holistic and immersive philosophy, upon which the College mission is built.

All members of the College community should be free from any conduct prohibited by Title IX in the classroom; social, recreational, and residential environments; and the workplace. The College seeks to foster a climate free from Title IX misconduct through a coordinated education and prevention program and clear and effective policies, as well as investigative and grievance procedures that are prompt, equitable, and accessible to all. In response to any reported conduct prohibited by Title IX, the College will take all appropriate steps to eliminate the misconduct, prevent its recurrence, and address its effects. Creating a safe campus environment is the responsibility of all members of the College community, both individually and collectively, and all members of the College community are expected to contribute to the prevention and elimination of gender-based and power-based misconduct.

In order to foster a climate that encourages reporting of conduct prohibited by Title IX, the College will actively educate the community, will respond to allegations promptly, will provide support measures to address the safety, emotional well-being, and academic and/or professional needs of the individuals involved. Employees responding to reports of Title IX misconduct will act in a manner that recognizes the inherent dignity of the individuals involved.

In order to achieve equitable results, the College will carefully review and/or investigate all reports and provide for fair and impartial evaluation.

### **B. PURPOSE OF POLICY**

The purpose of the Title IX Policy is to provide the College community with a clearly articulated set of behavioral standards, common understandings of definitions and key concepts and descriptions of prohibited conduct. This Policy applies to all community members, including students, employees, and third-parties, regardless of sexual orientation, gender identity, or gender expression and guarantees the services and protections required under 129-B to all students regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. It is intended to protect and

guide students, faculty, staff, and third-parties who have been affected by Title IX sexual harassment, whether as a complainant/reporting party, a respondent/responding party, or a third party/witness.

When used in reference to conduct violating Title IX, “complainant” means any individual who is alleged to be the victim of sexual harassment, and “respondent” means any individual who is alleged to be the perpetrator of sexual harassment. A person may be a complainant or respondent, even where no formal complaint has been filed and no grievance process is pending. “Recipient” within this Policy refers to Union College as the Recipient of federal funding, prompting its compliance with Title IX of the 1972 Education Amendments. Under Title IX a “Formal Complaint” is a document that initiates a recipient’s grievance process, but a Formal Complaint is not required in order for the Recipient to have actual knowledge of sexual harassment, or allegations of sexual harassment, that activates the recipient’s legal obligation to respond promptly, including by offering supportive measures to a complainant.

“Third party” refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else. “Report” refers to any incident or concern regarding conduct prohibited by Title IX that is disclosed to the Title IX Coordinator, a Deputy Title IX Coordinator, or any other responsible employee of the College.

At Union College, all employees are considered “responsible employees” and have the duty to report any acts of conduct prohibited by Title IX to the Title IX Coordinator, unless they are designated as a “confidential resource” (see Section V). Student workers are generally not “responsible employees” except for a few select categories (see Section VI). Responsible employees must share appropriate details of a disclosure of conduct prohibited under Title IX to the Title IX Coordinator or a Deputy Title IX Coordinator. Reports from responsible employees help the College monitor patterns of behavior, drive changes to general training and education, and ensure that students are aware of their options in addressing any misconduct as well as the support services that are available to them. A report from a responsible employee does not independently initiate any grievance process.

The purpose of this Policy is to:

- i. Define terms related to conduct prohibited under Title IX and New York State and federal laws to create a common community-wide understanding;
- ii. Identify the roles of the Title IX Coordinator, Deputy Title IX Coordinators, Investigators and other institutionally appointed parties;
- iii. Provide information about where a College community member can obtain support or access confidential resources;
- iv. Provide information about how a College community member can make a report on campus or off campus; and

- v. Provide information about how the College can/will respond to, investigate, evaluate, and resolve a report of conduct prohibited by Title IX against a College community member.

### C. SCOPE

As stated above, this Policy applies to all members of the College community, including all employees, students, visitors, and non-members, regardless of sexual orientation, gender identity, or gender expression participating or attempting to participate in College activities. When used in this Policy, “student” generally refers to any individual who is enrolled in the College on either a fulltime or part-time basis. The status begins when they first engage in official College activities, such as Orientation or athletic participation, and ends when withdrawal from the College occurs or their enrollment is terminated. This term is further defined in the Union College Student Handbook.

The procedures for grieving a Formal Complaint against a student for conduct constituting a violation addressed and governed by the narrowly tailored scope of Title IX can be found in Appendix A: Procedures for the Resolution of Reports of Conduct by Students Within the Scope of Title IX. The procedures for grieving a Formal Complaint against an employee for conduct constituting a violation addressed and governed by the narrowly tailored scope of Title IX can be found in Appendix B: Procedures for the Resolution of Reports of Conduct by Employees Within the Scope of Title IX.

When a complaint is filed against a community member who embodies more than one status at the College (i.e., the community member is a student and an employee), the Title IX Coordinator, or their designee, has the authority to determine the investigation process (student or employee) for the reported incident. The selected process shall have the authority to make final determinations affecting all of a Respondent’s statuses at the College.

When the policy uses “non-member,” this may include independent contractors, vendors, visitors, and others who conduct business with the College or on College property, and are also expected to comply with this Policy. Members of the College community have a responsibility to adhere to College policies and local, state, and federal laws.

This Policy applies to conduct that occurs on-campus and on or within property owned and operated by the college.

Any individual may make a report alleging a violation of this Policy. The College will provide resource options and respond promptly and equitably to all allegations of conduct prohibited by Title IX. The College is committed to maintaining fairness for all parties as well as balancing the needs and interests of the individuals involved with the safety of the community as a whole. Reports of misconduct that are alleged to have violated this Policy by members of the Union College community who are not students or employees, including but not limited to visitors, members of the Board of Trustees, members of the Alumni Council, or other College-affiliated committees, groups or associations, may be subject to the College’s Rules of Public Order.

## 1. GENERAL RULES OF APPLICATION

**The effective date of this Policy and its associated procedures is on August 10, 2021. These procedures will apply in all cases where a Formal Complaint of prohibited conduct under this Policy is made on or after August 10, 2021.**

Where the date of the alleged prohibited conduct precedes the effective date of these procedures, the definitions of prohibited conduct in existence at the time of the alleged conduct will be used. These procedures, however, will be used to investigate and resolve all Formal Complaints made on or after the effective date of these procedures, regardless of when the conduct occurred.

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of these procedures, this Policy and its associated procedures, or the invalidated elements of these procedures, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should these procedures be revoked in this manner, any conduct by students covered under them shall be investigated and adjudicated in accordance with Gender-based Misconduct Policy. In the case of revocation, any conduct by employees covered under them shall be investigated and adjudicated in accordance with the Policy Prohibiting Discrimination, Harassment and Retaliation in Employment.

## II. COORDINATION WITH NON-DISCRIMINATION

In compliance with Title IX, Title VII, and other New York State and federal non-discrimination and education laws, the College prohibits discrimination on the basis of sex in employment as well as in admission, enrollment, and in the provision of all services, programs, and activities.

The College is committed to providing an environment free from discrimination, including discrimination that is based upon sex, sexual orientation, gender identity, and gender expression. Targeting individuals on the basis of these characteristics is also a violation of the College's community standards. Under these circumstances, the College will coordinate the investigation and resolution efforts to address discrimination related to the targeted individual's sex, sexual orientation, gender identity, or gender expression. You may view the Union College Notice of Non-Discrimination and Equal Opportunity at this website:

<https://www.union.edu/sites/default/files/titleix/202108/nondiscrimination-notice2021.pdf>

The requirements and protections of these procedures apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's

Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

## A. COLLEGE STATEMENT ON PRIVACY AND CONFIDENTIALITY

The College is committed to protecting the privacy of all individuals involved in reporting and resolution procedures and processes under this Policy. The College is also committed to assisting students, employees, and non-members to make informed choices regarding how they choose to respond or participate in a response to conduct prohibited by Title IX. With respect to any report under this Policy, the College will take reasonable efforts to protect the privacy of participants in accordance with applicable New York State and federal law, while balancing the need to gather information to assess the report to take steps to eliminate misconduct prohibited by Title IX, prevent its recurrence, and remedy its effects.

Privacy and Confidentiality have distinct meanings under this Policy.

**Privacy:** Privacy means that information related to a report of conduct prohibited by Title IX will be shared with a limited number of College officials with a legitimate interest who “need to know” in order to assist in support of the Complainant, Respondent, or witnesses in the assessment, investigation, and resolution of the report. Only employees of the College who are essential to functions of this Policy and its related procedures are notified of any or all elements of a report or formal complaint, and only when necessary to fulfill the responsibilities of their role.

**Confidentiality:** Confidentiality exists in the context of laws that protect certain relationships, including medical and clinical care providers, mental health providers, counselors, and ordained clergy (but not those who provide administrative services related to the provision of those services), all of whom may engage in confidential communications under New York law. The College provides a number of confidential resources, both on and off campus (see Section V) for both the reporting party and responding party.

The College has designated its Title IX Coordinator and Deputy Title IX Coordinators as the individuals responsible for evaluating requests for confidentiality. When weighing a Complainant's request for confidentiality, or that no investigation or grievance procedure be pursued, the Title IX Coordinator or Deputy Title IX Coordinator will consider the following:

- The risk that the Respondent will commit additional acts of gender-based misconduct;
- Whether there have been other reports of conduct prohibited by Title IX against the same Respondent;
- Whether the Respondent has a history of arrests or records from a prior school indicating a history of comparable violence;

- Whether the Respondent threatened further conduct prohibited by Title IX or other violence against the Complainant or others;
- Whether the conduct prohibited by Title IX was committed by multiple Respondents;
- Whether the conduct prohibited by Title IX involved the use of a weapon;
- Whether the Complainant is under 18 years of age;
- Whether the College possesses other means to obtain relevant evidence of the conduct prohibited by Title IX (e.g., security cameras, physical evidence); and
- Whether the Complainant's report reveals a pattern of conduct prohibited by Title IX (e.g., via illicit use of drugs or alcohol, at a particular location, or by a particular group).

The presence of one or more of these factors could lead the College to investigate and, if appropriate, to pursue disciplinary action. If none of these factors are present, the College will likely respect the reporting party's request for confidentiality, but may nonetheless be prompted to consider broader remedial action, such as: increased monitoring, supervision or security at locations where the conduct prohibited by Title IX occurred; increased education and prevention efforts, including to targeted-population groups; conducting climate surveys; and/or revisiting its policies and practices. All resolution proceedings are conducted in compliance with the requirements of Family Educational Rights and Privacy Act (FERPA), the Clery Act, Violence Against Women Act (VAWA), Title IX, New York State Education Law Article 129B, and College policy.

At all times, the College will seek to respect the request of the Complainant, and where it cannot do so, the College will advise the Complainant and keep them informed about the chosen course of action, and, to the extent possible, share information with only those people responsible for handling the College response.

## **B. ANTI-HARASSMENT POLICIES AND FREEDOM OF SPEECH / EXPRESSION**

Union College is also committed to the free and vigorous discussion of ideas and issues, which the College believes will be protected by this Policy. Union College is committed to protecting the academic freedom and freedom of expression of all members of the College community. This Policy shall be applied in a manner that protects the academic freedom and freedom of expression of all parties to a complaint. Academic freedom and freedom of expression include, but are not limited to, the expression of ideas, however controversial, in the classroom, residence hall, and, in keeping with different responsibilities, in workplaces elsewhere in the College community.

If the conduct in question is legally protected by academic freedom in accordance with the Academic Freedom Policy statement contained in the Faculty Manual (FM V.II), which is adapted from the AAUP "1940 Statement of Principles on Academic Freedom and Tenure," it is

incapable of legally creating a hostile environment in and of itself. To the extent allowed by applicable law, a determination of whether speech serves a pedagogical purpose is initially guided by the faculty speaker and his/her faculty peers (defined as members of the FEC).

### **III. DEFINITION OF PROHIBITED CONDUCT UNDER TITLE IX**

#### **A. FORMS OF PROHIBITED SEXUAL HARASSMENT**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Union College's Title IX Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of prohibited harassment that are prohibited under Title IX. Acts of Title IX sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

##### **Location of Incident**

- The incident(s) occurred on Union's campus, within the United States;
- The incident(s) occurred in a building under the College's control, such as a classroom outside of the College's main campus, and within the United States;
- The incident(s) were part of one of the College's education programs or activities within the United States, including locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the conduct occurs such as conduct occurring at a College-sponsored event or at an off-campus, College-owned building; or
- The incident occurred through the use of computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the College's programs and activities over which the College has substantial control.

##### **Title IX Sexual Harassment:**

The U.S. Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and New York state regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. Union College has adopted the following definition of Title IX Sexual Harassment in compliance with Title IX.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

**Title IX Sexual Harassment** includes conduct on the basis of sex, including gender, sexual orientation, or gender identity or expression, that falls within one of the two following categories:

- 1) Quid Pro Quo:
  - a. an employee of the recipient,
  - b. conditions the provision of an aid, benefit, or service of the recipient,
  - c. on an individual's participation in unwelcome sexual conduct; and/or
- 2) Hostile environment:
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and
  - d. pervasive, and,
  - e. objectively offensive, that it effectively denies a person equal access to Union College's education program or activity

**Title IX Sexual Assault** is prohibited under this Policy. Sexual assaults can take a number of forms, including:

- **Non-Consensual Sexual Contact** is defined as the touching of the private body parts (including genital area, anus, groin, inner thigh, buttocks or breast) of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her/their youth or because of his/her/their temporary or permanent mental or physical incapacity.
- **Non-Consensual Sexual Act** is defined as penetration of the vagina or anus, however slight, with any body part or object, or oral penetration by a sex organ of another person, without affirmative consent.
- **Incest** is defined as non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** is defined as non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.

**Title IX Domestic Violence** is defined as a felony or misdemeanor crime of violence committed by:

- a current or former spouse or intimate partner of the person against whom the violence is committed;
- a person with whom the person against whom the violence is committed shares a child in common;
- a person who is cohabiting with, or has cohabited with, the person against whom the violence is committed as a spouse or intimate partner;

- a person similarly situated to a spouse of the person against whom the violence is committed under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

This definition does not apply to roommates who have not expressed interest in entering into, or who have not entered into, a dating or sexual relationship.

**Title IX Dating Violence** is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person against whom the violent act is/acts are committed. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

**Title IX Stalking** occurs when a person engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, on the basis of sex (including gender, sexual orientation, or gender identity or expression), under circumstances that would cause a reasonable person to fear for personal safety or the safety of others or suffer substantial emotional distress.

- **Course of conduct** means two or more acts, including but not limited to, acts in which the stalker directly, indirectly or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person, or interferes with a person's property.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the person against whom the stalking was committed.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

## **B. STATEMENT ON AFFIRMATIVE CONSENT, COERCION, INCAPACITATION, AND ALCOHOL**

**Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity.** Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

**Consent must exist from the beginning to end of each instance of sexual activity and for each form of sexual contact.**

**Consent to one form of sexual contact does not constitute consent to all forms of sexual contact. For example, an individual may agree to kiss, but choose not to engage in touching the intimate parts of their or another's body, or sexual intercourse. An individual should obtain consent before moving from one sexual act to another.**

**Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.** Each person must obtain individual consent.

**Consent may be withdrawn by any party at any time.** Withdrawal of consent must also be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.

**Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity.** Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity.

**A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.** Even in the context of a relationship, there must be mutually understandable communication that clearly indicates willingness to engage in sexual activity each time such activity occurs. Consent to previous sexual activity does not constitute consent in the future.

Consent must be obtained each time. In the state of New York, consent can never be given by minors under the age of 17.

**Consent is not effective if it results from the use or threat of physical force, intimidation or coercion, or any other factor that would eliminate an individual's ability to exercise their own free will to choose whether or not to have sexual contact.** Coercion includes the use of pressure and/or oppressive behavior, including express or implied threats of harm and/or severe and/or pervasive emotional intimidation, which places an individual in fear of immediate or future harm or physical injury or causes a person to engage in unwelcome sexual activity. A person's words or conduct amount to coercion if they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity.

**An individual who is incapacitated is not able to make rational, reasonable judgments and therefore is incapable of giving consent.** Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless due to drug or alcohol consumption, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if the individual demonstrates that they are unaware of where they are, how they got there or why or how they became engaged in a sexual interaction. Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements, lack of awareness of circumstances or surroundings, or the inability to communicate for any reason. An individual may experience a blackout state in which they appear to be giving consent but does not actually have conscious awareness or the ability to consent. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication due to alcohol and/or drug use. The relevant standard that will be applied is whether the Respondent knew, or a sober reasonable person in the same position should have known, that the other party was incapacitated, and therefore could not consent to the sexual activity.

The College considers sexual contact while under the influence of alcohol, drugs, or other substances to be risky behavior. Alcohol and drug use impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. Being intoxicated or impaired by drugs or alcohol is never an excuse for conduct prohibited by Title IX and does not excuse one from the responsibility to obtain consent.

**When consent has been withdrawn or can no longer be given, sexual activity must stop.**

**a. CONSENSUAL SEXUAL RELATIONSHIPS BETWEEN EMPLOYEES AND STUDENTS**

The College is committed to maintaining an environment where the education of students is of the greatest importance. Dating, romantic, or sexual relationships between College employees and students, even if consensual, can negatively interfere with the student's pursuit of learning and the educational environment and the integrity of the College. Power differentials, real or perceived, can diminish a student's ability to give meaningful consent to such a relationship. An employee's ability to provide College services without partiality is suspect when the employee and the student have a consensual relationship. Even when the employee and student act with integrity, others may perceive bias, partiality, or influence. Furthermore, the dissolution of these relationships can create discord and significantly impair the normal operations of the College.

For these reasons, consensual relationships between students and employees, including relationships that occur when College is not in session or students are on leave, are prohibited.

For more information on the College Consensual Relationship Policy, review the following link: <https://www.union.edu/academic-affairs/faculty-governance-committees/union-college-faculty-manual>

#### **IV. RESOURCES AND SUPPORT MEASURES**

##### **A. OVERVIEW**

The College is committed to treating all individuals with dignity, care, and respect. Any individual affected by conduct prohibited by Title IX, whether as a reporting party/Complainant, a responding party/Respondent, or a third party/witness, will have access to support services through the College. The College recognizes that any individual involved in an incident of conduct prohibited by Title IX may have questions and we encourage College community members to seek the support of campus and community resources. The College can provide guidance in making decisions about resources, obtaining information about available resources, and assisting either party in the event that a report and/or resolution is pursued. Individuals are encouraged to use all available resources, regardless of whether the incident occurred recently or in the past.

Complainants, Respondents, and third parties can expect the following:

- a. The opportunity to meet with the Title IX Coordinator or a Deputy Title IX Coordinator to answer questions regarding the College complaint processes for students and employees;
- b. Notice of Confidential Resources, including health care and mental health counseling services, on campus and/or within the local community;
- c. Notice of the option to pursue law enforcement action and to be assisted by the Union College Campus Safety Department or other College officials in accessing and communicating with such authorities. This notice will include a discussion of the importance of the preservation of evidence.
- d. The opportunity to request that the College take steps to prevent unnecessary or unwelcome contact or communication with another member of the community or support in preventing unwelcome contact or communication with a non-community member, when appropriate.
- e. The right to be free from retaliation. Any concerns of retaliatory behavior, by or against any party, should be immediately reported to the Union College Campus Safety Department, the Title IX Coordinator or a Deputy Title IX Coordinator.

##### **B. CONFIDENTIAL RESOURCES**

The College encourages all community members to report any incident of conduct prohibited by Title IX. The College recognizes, however, that there are many barriers to reporting, both individual and societal, and not every individual will choose to report to the College or make a formal complaint with the College or with local law enforcement. For those individuals who are not prepared to make a report, there are several confidential resources available for students and employees. The use of confidential resources by students who have chosen to make a report or pursue a formal complaint is encouraged by the Title IX team, as these resources can provide support and advocacy during and beyond the duration of any grievance or resolution process.

Individuals seeking to talk to someone about an incident of conduct prohibited by Title IX in a confidential manner without making a report to the College or triggering any investigation or action by the College may utilize the following confidential medical and mental health resources. Students, faculty, and staff also have access to resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in interfacing with the criminal justice system.

All individuals are encouraged to utilize the resources that are best suited to their needs, whether on or off campus. In general, off-campus resources can assist individuals wishing to make a report to the College, but will not notify the College without the consent of the Complainant (and might not notify the College at all). These resources hold a statutorily protected confidentiality that prohibits the release of an individual's information without that individual's express consent. While on-campus confidential resources are excluded from their role as responsible employees, by law and licensure, these persons may be bound as mandatory reporters, meaning reports may be required to be made to the College or local law enforcement under limited circumstances that pose an imminent danger to the individual or to others. Confidential resources, under federal law, may also be required to share non-identifying statistical information with the College only for the purposes of reporting requirements under New York State and federal law. Confidential Resources can be found in the Resource Appendix.

For more information about how the College defines “confidentiality” and “privacy,” see the College’s Statement on Privacy and Confidentiality (Section II.1) above.

## **1. SUPPORT MEASURES**

Upon receipt of a report, the College will provide support measures to prevent further acts of misconduct and to provide a safe educational and work environment. The College will determine the necessity and scope of any support measures. Even when a person involved with the Title IX process does not specifically request that protective action be taken, the College may choose to impose support measures at its discretion to monitor the safety of any individual, the broader College community, or the integrity of the review process.

Individuals seeking such assistance should speak with the Title IX Coordinator or a Deputy Title IX Coordinator, who will coordinate such requests on the behalf of the individual. The College

will maintain contact with the parties to ensure that all safety and emotional and physical well-being concerns are being addressed.

A grievance procedure does not need to be effectuated in order for a Complainant to access support measures. Further, in instances where a formal grievance procedure is utilized, either party may be entitled to support measures regardless of the finding(s).

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed directly to the Title IX Coordinator or the assigned Deputy Title IX Coordinator. The College will take immediate and responsive action to enforce services or restrictions previously ordered or implemented by the College.

The College may impose any remedy that can be tailored to the involved parties to achieve the goals of this Policy, even if not specifically listed here. The range of support measures may include but is not limited to:

**No-contact Order:** An individual may request, or the College may impose, communication and contact restrictions to prevent further potentially harmful interaction. These communications and contact restrictions generally preclude in-person, telephone, electronic, or third-party communications. No-contact orders are issued by the College's Office of Community Standards in accordance with its policies and procedures. In some cases, an individual may also wish to consider a restraining order, which can be obtained from the local courts. This is a civil proceeding independent of the College. If a court order is issued the College will, to the extent possible, assist the protected person in benefiting from the restrictions imposed by the court and will also facilitate on campus compliance with the order. The College may also limit an individual or organization's access to certain College facilities or activities as part of the no-contact order. Under New York State law, the Title IX Coordinator has the authority to issue a no-contact order in opposition to the other party's request.

Both parties may at any time request that the Title IX Coordinator issue, modify, or remove Supportive Measures based upon a change in circumstance or new information that would affect the necessity of any Supportive Measures.

Student-parties may petition the Vice President for Student Affairs (VPSA), in writing to review the Title IX Coordinator's decision whether to issue, modify, or remove Supportive Measures. A party may seek such review only if the Supportive Measure directly impacts that party. A party seeks review by submitting a letter explaining the reason for their request for review and including any written evidence in support of such request. The materials should be submitted to the Title IX Coordinator, who will forward all materials to the VPSA. The Title IX Coordinator will also inform the non-petitioning party that a request has been filed and provide a copy of the request to that party.

If, based upon the request, the VPSA, is considering issuing, modifying, or removing an

Supportive Measure, the VPSA, will invite the non-petitioning party and the Title IX Coordinator to submit responses. The VPSA, will establish a reasonable timeline for handling the matter, including deadlines for submissions.

If the VPSA determines that the Title IX Coordinator's decision should be set aside, the VPSA will instruct the Title IX Coordinator to vacate the prior decision on Supportive Measures immediately. At that time, the Title IX Coordinator may impose alternate reasonable and appropriate Supportive Measures. The VPSA may, but is not required to, provide the Title IX Coordinator with guidance regarding appropriate alternate Supportive Measures.

The VPSA will provide a written decision to the parties and the Title IX Coordinator. The decision of the VPSA is final; there is no right to appeal.

**Academic, Employment, or Residence Modifications:** An individual involved with the Title IX process may request academic or employment modifications or a change in residence after a report of conduct prohibited by Title IX. Individuals who request assistance in changing their academic or living situation after an incident of gender- based misconduct will receive appropriate and reasonably available modifications.

These may include:

- Academic modifications, including a change in class schedule, taking an incomplete, dropping a course without penalty, attending a class remotely or other alternative means, providing an academic tutor, or extending deadlines for assignments;
- Change of housing assignment;
- Change in work assignment or schedule; or
- Access to an escort to ensure safe movement between work or academic activities.

**Emotional Support:** The College will provide counseling services through the Counseling Center for students and through the College's Employee Assistance Program (EAP) for employees or will assist in providing a referral to off-campus agencies as needed. For campus and community resources please see the "Confidential Resource" section of this Policy.

Counseling and emotional support are available to any member of the campus community.

**Interim Action/Emergency Removal:** Where the report of conduct prohibited by Title IX poses an ongoing risk of harm to the safety or well-being of an individual or members of the campus community, the College may place an individual or organization on interim suspension or impose leave for an employee. Pending resolution of the complaint, the individual or organization may be denied access to campus. When interim suspension or leave is imposed, the College will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

## V. REPORTING

The College is committed to providing a variety of welcoming and accessible means to report so that as many instances of conduct prohibited by Title IX will be reported as possible. The College also recognizes that the decision whether or not to report conduct prohibited by Title IX is a personal decision and that there are many barriers to reporting, both individual and societal. Not every individual will be prepared to make a report to the College or to law enforcement, and individuals are not expected or required to pursue a specific course of action.

An incident does not have to occur on campus to be reported to the College but only instances that occur on-campus will be adjudicated per the Title IX Policy. Off-campus conduct that adversely affects the College or the community may be adjudicated under the Gender-based Misconduct Policy or Policy Prohibiting Discrimination, Harassment, Bias and Retaliation in Employment.

You have the right to make a report to campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.

**Student-complainants do not have to decide whether or not to request an investigation or make decisions about adjudicative procedures at the time a report is made.** The College recognizes that choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The College will respect an individual's autonomy in making these important decisions and provide support that will assist each individual in making that determination whenever possible. Employee-complainants will be given the autonomy to make these important decisions whenever possible. When a report is of the nature that the College must move forward with an investigation under New York State or federal law, the College will respect the decision of the individual regarding their desired level of involvement with the investigation. The College can never force a reporting party to participate in an investigation.

As outlined in the Resource Appendix, there are confidential resources on campus and in the community available to individuals not wishing to make a report to the College. Information shared with these confidential resources will not be reported to the College but may be shared as aggregate data.

As outlined in the above section, the College Statement on Privacy and Confidentiality, the College respects the privacy interests of students, faculty, and staff. All information reported will be shared only with those College employees who will assist in the investigation and/or resolution of the complaint.

## **A. EMERGENCY/IMMEDIATE REPORTING OPTIONS**

The College encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of conduct prohibited by Title IX. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. The College will assist any College community member in getting to a safe place and will facilitate transportation to the hospital, coordinate with law enforcement, and/or provide information about the resources available on and off campus as well as the process for filing a complaint. Assistance is available from the College 24 hours a day year-round by calling the Campus Safety Department or local law enforcement. Any individual can request that a member of the Campus Safety Department respond and take a report. Individuals can request to speak with a member of the Counseling Center without making a report to public safety. There is no requirement that an individual file a complaint with the Campus Safety Department in order to speak with a member of the counseling staff at the Eppler-Wolff Wellness Center or to use the Sexual Assault Resource Hotline which is available 24/7.

A medical provider can provide emergency and/or follow-up medical services, and has the ability to discuss any health care concerns related to the incident in a confidential medical setting, which may bring peace of mind. The medical exam has two goals: first, to diagnose and treat the full extent of any injury or physical effect (e.g., sexually transmitted infection or the possibility of becoming pregnant, any physical harm or injury incurred during the incident) and, second, if qualified as a sexual assault nurse examiner, to properly collect and preserve evidence. There is a limited window of time (typically 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. To preserve evidence, avoid changing clothes, showering/bathing, or brushing teeth or hair. **Taking the steps to gather evidence immediately does not commit an individual to any course of action.**

The decision to seek medical attention and gather any evidence will remain confidential and preserve the full range of options to seek resolution through the College complaint processes or through the pursuit of criminal action. The College encourages victims to obtain medical attention promptly after an assault.

### **1. Reporting Resources**

In addition to the confidential resources listed in the Resource Appendix, all College community members have access to a variety of resources provided by the College that can provide crisis intervention services, counseling, academic support, and medical services. A list of Title IX professionals who are trained to assist faculty, staff, and students with understanding their rights, resources, and options is located within the Resource Appendix.

As the Title IX Coordinator and Deputy Title IX Coordinators are the ultimate recipients of

reports of conduct prohibited by Title IX, when a report is made directly to them, while not bound by confidentiality, these resources will nevertheless maintain the privacy of an individual's information within the limited number of those involved in the Title IX resolution process.

## **B. CAMPUS REPORTING OPTIONS**

As noted in Section II, all College employees, including faculty, staff, and administrators, except confidential resources are identified as "responsible employees," and have a responsibility for student and employee welfare. "Responsible employees" are required to share with the Title IX Coordinator or a Deputy Title IX Coordinator any report of conduct prohibited by Title IX they receive or of which they become aware. Having a wide-range of individuals that can support a student in making a report of conduct prohibited by Title IX ensures that students can approach an employee they know and trust.

Resident Advisors are the only student-employees of the College who are considered to have the responsibility to report information regarding conduct prohibited by Title IX of which they become aware while acting in their color of title.

All College community members, even those who are not obligated by this Policy, are strongly encouraged to report information regarding any incident of conduct prohibited by Title IX to the Title IX Coordinator or a Deputy Title IX Coordinator.

The College recognizes that a student or employee may choose to report conduct prohibited by Title IX to any trusted employee of the College. For example, a student may choose to confide in a resident assistant, faculty member, or a coach, all of whom are considered responsible employees. Under this Policy, responsible employees must report the incident to the Title IX Coordinator or a Deputy Title IX Coordinator. Under this Policy, any employee (who has not been designated as a confidential resource) who receives a report of conduct prohibited by Title IX must share the report with the Title IX Coordinator or a Deputy Title IX Coordinator. The Title IX Coordinator or a Deputy Title IX Coordinator are specifically charged with responding to allegations of conduct prohibited by Title IX.

To enable the College to respond to all reports in a prompt and equitable manner, the College encourages all individuals to directly report any incident of conduct prohibited by Title IX to the Title IX Coordinator or a Deputy Title IX Coordinator as soon as the safety of the reporting party is secured. Responsible employees are not investigators and are not responsible for engaging in any part of the formal intake process under this Policy.

## **C. ANONYMOUS REPORTING**

Any individual may make an anonymous report concerning conduct prohibited by Title IX. An individual may report the incident without disclosing their name, identifying the Respondent, identifying the Complainant, or requesting any action.

Where a report is filed but the identity of the Complainant is unknown, the Title IX Coordinator will assess the nature and circumstances of the report, including whether it provides information that identifies the potential complainant, the potential responding party, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of prohibited conduct consistent with applicable federal and state laws and these procedures.

Depending on the level of information available about the incident or the individuals involved the College's ability to respond to an anonymous report may be limited including but not limited to the ability to collect evidence, commence a formal investigation, or facilitate a formal grievance procedure.

The College offers a public reporting form that can be found at the below link:

[https://cm.maxient.com/reportingform.php?UnionCollege&layout\\_id=9](https://cm.maxient.com/reportingform.php?UnionCollege&layout_id=9)

Responsible employees cannot report incidents anonymously.

#### **D. TIME FRAME FOR REPORTING**

So long as the Respondent is a matriculating student or employed at the College, there is no time limit to filing a complaint to engage the Title IX process. However, individuals are encouraged to report conduct prohibited by Title IX immediately in order to maximize the College's ability to respond promptly and equitably. The College does not, however, limit the timeframe for reporting. Be mindful that the College will not be able to initiate a conduct prohibited by Title IX investigation against an individual who is no longer affiliated with the College.

Under those circumstances, the College will still conduct a Title IX review and take appropriate steps depending on the level of control (if any) the College has over the alleged perpetrator. If the Respondent is no longer under the control of the College, while reports cannot initiate a grievance procedure, they can help the College offer support measures, accurately report incidents of conduct prohibited by Title IX, or drive focus areas within education or programming.

#### **E. COORDINATION WITH LAW ENFORCEMENT**

Because the standards for determining a violation of criminal law are different from the standards for determining a violation of this Policy, criminal investigations, reports, or outcomes

are not determinative of whether conduct prohibited by Title IX has occurred for purposes of this Policy. In other words, conduct may constitute conduct prohibited by Title IX under this Policy, even if a finder of fact in a criminal matter determined there was insufficient evidence to meet the criminal burden of proof or if law enforcement agencies decline to prosecute. The filing of a complaint of conduct prohibited by Title IX under this Policy is independent of any criminal investigation or proceeding, and the College will not await the conclusion of any criminal investigation or proceedings to: (i) commence its own investigation; (ii) take support measures to protect the Complainant and the College community, if necessary; and/or (iii) implement disciplinary proceedings without regard to any pending criminal proceedings.

#### **F. BYSTANDER INTERVENTION**

The College encourages all community members to take reasonable and prudent actions to prevent or stop an act of conduct prohibited by Title IX. Taking action may include direct intervention or seeking assistance from a person in authority or law enforcement.

#### **G. STATEMENT AGAINST RETALIATION**

It is a violation of this Policy to retaliate in any way against an individual or a group because the individual or group of individuals reported an allegation of conduct prohibited by Title IX.

The College recognizes that retaliation can take many forms and may be committed by an individual or a group against any individual or a group involved in a report or investigation of Title IX sexual harassment. The College recognizes that a Complainant, Respondent, or third party can be the subject of retaliation by another party of the report or complaint. The College will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting conduct prohibited by Title IX is entitled to protection from any form of retaliation following a report that is made in good faith, even if the case concludes without a finding of responsibility.

Allegations of retaliation should be reported directly to the Title IX Coordinator or the Deputy Title IX Coordinator assigned to the complaint.

## **VI. TITLE IX REVIEW**

### **A. ROLE OF THE TITLE IX COORDINATOR**

The Title IX Coordinator oversees the College's review, investigation, and resolution process for reports of conduct prohibited by Title IX and coordinates the College's compliance with federal and New York State laws that pertain to sexual harassment. The Title IX Coordinator is supported by several College administrators who serve as Deputy Title IX Coordinators. Each is knowledgeable and trained in New York State and federal laws that apply to matters of conduct prohibited by Title IX, as well as College policy and procedure. The Title IX Coordinator is responsible for ensuring equity within the College's resolution processes and procedures. The Title IX Coordinator is not an advocate for an individual person or party involved in a Title IX sexual harassment complaint, report, or investigation.

The Title IX Coordinator and Deputy Title IX Coordinators can be contacted by telephone, email, or in person.

The duties and responsibilities of the Title IX Coordinator and Deputy Title IX Coordinators include training, education and climate checks as well as the oversight of procedures that promptly and equitably eliminate sexual harassment, prevent its recurrence, and address its effects on individuals and our community. Title IX Coordinator and Deputy Title IX Coordinators will:

- Oversee the investigation and resolution of all reports of conduct prohibited by Title IX;
- Meet with any individual, whether a Complainant, a Respondent, or a third party, to discuss support measures, resources, and procedural options on and off campus;
- Ensure prompt and equitable resolutions that comply with all requirements and timeframes specified in the complaint procedures;
- Conduct ongoing and annual climate checks, tracking and monitoring of gender-based misconduct allegations on campus; and
- Coordinate all training, education and prevention efforts.
- Designate the appropriate procedures for formal grievances against students and employees.

### **B. NOTICE/COMPLAINT**

Upon receipt of a report or notice to the Title IX Coordinator of an alleged violation of this Policy, the Title IX Coordinator or Deputy Coordinator will initiate assessment to determine the

next appropriate steps considering any requests of the Complainant, the College's responsibility to the Union College community, and policy implications.

The College will respond to an allegation of conduct prohibited by Title IX by either:

- i. Offering supportive measures because the Complainant does not wish to proceed formally; and/or
- ii. Engage in an informal resolution; and/or
- iii. Proceed to a formal grievance process including an investigation and hearing; or
- iv. If after evaluation, the report is found to be without cause under this Policy, support the student in reallocating the report to the appropriate office, department, or grievance process

A formal grievance process will determine whether the Respondent is found responsible or not responsible for violating the College's Policy. If the Respondent is found responsible for a Policy violation, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment, discrimination, or conduct prohibited by Title IX, its potential recurrence, or its effects.

### **C. INITIAL ASSESSMENT**

The College will address all reports of conduct prohibited by Title IX. The Title IX Coordinator will oversee the Title IX review process. The College is responsible for reviewing and responding to all allegations of misconduct, regardless of whether that review culminates in an investigation under this Policy or referral to another College procedure, if appropriate.

The Title IX Coordinator or a Deputy Title IX Coordinator will review any reports of alleged conduct prohibited by Title IX. If a formal complaint is filed with the College, the Title IX Coordinator or Deputy Title IX Coordinator will document their determination to dismiss the complaint, or refer the conduct to another process, or transfer the complaint from Title IX and pursue the complaint under the College's Gender-based Misconduct Policy, or dismiss the complaint under Title IX and pursue the complaint under Title VII.

Steps in the initial assessment can include, but are not limited to:

- i. The Title IX Coordinator or Deputy Title IX Coordinator discussing safety and wellness needs with the Complainant to insure immediate health and wellness, on- and off-campus resources including intervention, mental health counseling, and medical services, and information regarding the availability of such services without a fee.
- ii. The Title IX Coordinator or Deputy Title IX Coordinator will inform the Complainant of

services including sexually transmitted infection testing, sexual assault forensic examinations, and resources available through the New York State Office of Victim Services (found at <https://ovs.ny.gov/>).

- iii. The Title IX Coordinator or Deputy Title IX Coordinator will review the available facts within the initial report to evaluate for cause under this Policy.
- iv. The Title IX Coordinator or Deputy Title IX Coordinator will review the options available to the complaint and the ways in which the College may respond to a report including informal processes and formal grievance procedures.
- v. The Title IX Coordinator or Deputy Title IX Coordinator will communicate with the person impacted to determine if they wish to make a formal complaint. The Title IX Coordinator will assist them to do so, if desired. If the person impacted does not wish to do so, the Title IX Coordinator or Deputy Title IX Coordinator will determine whether to initiate a complaint after conducting a threat assessment to determine if there is a competing threat to health and/or safety.
- vi. The Title IX Coordinator or Deputy Title IX Coordinator will review the available processes and ensure that the Complainant is aware of their rights and will work with the Complainant to determine if they prefer a supportive or remedial response, an informal resolution, or if they wish to move forward with a formal grievance process which includes an investigation and hearing.
- vii. If an informal resolution option is preferred, the Title IX Coordinator will assess whether the complaint is suitable for informal resolution, which informal mechanisms may best serve the situation, and may seek to determine if the Respondent is willing to engage in informal resolution, if applicable.
- viii. If a formal grievance process is preferred, the Title IX Coordinator will determine if the misconduct allegations falls within the scope of Title IX:
  1. If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, with the investigation to address:
    - a. An incident, and/or
    - b. A pattern of alleged misconduct, and/or
    - c. A culture/climate issue, based on the nature of the complaint.
  2. If it does not, the Title IX Coordinator will “dismiss” any aspect of the complaint outside of the scope of Title IX harassment and “transfer” any aspect of the complaint determined to fall within the scope of conduct defined to be a violation of the College’s Gender-based Misconduct Policy or community standards. If the complaint is dismissed under Title IX but will proceed under the Gender-based Misconduct Policy or the Policy Prohibiting Discrimination, Harassment and Retaliation in Employment, the Title IX Coordinator or their designee will document the dismissal

and provide notice to parties as to the transfer of the complaint from the Title IX

Grievance Procedures to the Gender-based Misconduct Grievance Procedures or the procedures contained within the Policy Prohibiting Discrimination, Harassment and Retaliation in Employment and how the complaint will proceed. A transfer from one grievance procedure to another is not the same as a dismissal of the complaint.

#### **D. THREAT ASSESSMENT**

The Title IX Coordinator or their designee may determine that a threat assessment should be conducted by the Campus Assessment Response and Education Team (“C.A.R.E. Team”) as a part of the initial assessment of reports of conduct by students prohibited by Title IX. The

C.A.R.E. Team can aid in determining some or all of the following:

- If emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Coordinator should pursue/sign a formal complaint absent a Complainant in the case a Complainant is unwilling or unable to participate.
- Whether the alleged conduct should be assessed in conjunction with a separate incident and/or a pattern of behavior or conduct and/or climate;
- If the alleged conduct was predatory in nature or related to potentially predatory conduct;
- If grooming behaviors or patterns of conduct were involved in the alleged conduct;
- Whether informal resolution would be possible, and if so, what mechanisms of informal resolution would be most successful.
- Assess appropriateness of sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/trespass order/no-contact order is needed per the College’s Timely Warning procedures.

A threat assessment is not an assessment or evaluation for an involuntary behavioral health hospitalization such as that conducted under Mental Hygiene Laws under the law of New York State. A threat assessment is conducted by internal staff to specifically evaluate the risk of actionable violence with a focus on predatory escalation or targeted behaviors.

#### **E. TIME FRAME FOR RESOLUTION**

The investigation of all reports will be completed promptly and without undue delay. The College strives to complete investigations as quickly as possible while ensuring that all investigations are conducted thoroughly and equitably. Extenuating circumstances may arise that require the investigation process to be delayed or extended including, for instance: the

complexity and severity of a complaint, if there is a parallel criminal investigation, or if the investigation occurs during school breaks or between school years. In general, a Complainant and Respondent can expect to receive periodic updates as to the status of the review or investigation.

If a student applies for a leave of absence from the College with the intent of a temporary exit, and such student is involved in a Title IX matter under investigation, the College may, at its discretion, complete the investigation, even with the student physically absent from the College. Any student involved in a Title IX matter who is not physically available because of a temporary leave may be provided with accommodations so far as will allow the student full and equitable participation.

If a medical or health emergency prevents a primary party from participating in the adjudicative process for an extended period of time, the College may stop the adjudicative procedures. If the adjudicative procedures are being stopped or delayed both parties will be notified in writing by the Title IX Coordinator. If adjudicative procedures are being stopped or delayed the Vice President of Student Affairs will review all interim measures, including, if applicable, any actions taken relative to emergency removal and/or transcript notations to determine if interim measures should be lifted or altered in anyway.

If the medical or health emergency prevents the Reporting Party from participating and the College stops or delays the adjudicative procedures, the Reporting Party will complete a new Formal Complaint upon return when requesting procedures resume.

If the medical or health emergency prevents the Responding Party from participating and the College stops or delays the adjudicative procedures, the Responding Party will notify the Title IX Coordinator in writing of their anticipated return date when known.

## **F. EFFECT OF CRIMINAL PROCEEDINGS**

As stated above, the filing and processing of a complaint of conduct prohibited by Title IX is independent of any criminal investigation or proceeding. The College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and proceedings outlined herein. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether conduct prohibited by Title IX under College policy occurred.

## **G. EFFECT OF PENDING COMPLAINT ON RESPONDENT**

If the Respondent is a current student, and found responsible for a Title IX violation, a notation

will be placed on the Respondent's transcript identifying the complaint. If the Respondent withdraws from the College while a Title IX complaint is pending, the Respondent's transcript will reflect that the student withdrew with conduct charges pending.

If a Respondent, during the course of an open investigation, should apply for a leave of absence from the College, the College may reserve the right to continue the investigation substantially in progress. Should a student be granted a leave of absence, the Title IX Coordinator and/or designee shall appropriately accommodate any Respondent physically unavailable during the process. If a student-Respondent is near completion of their academic requirements and is scheduled to graduate, the College may withhold the student's diploma pending the completion and outcome of the investigation.

## **H. COMMUNICATIONS**

All communications and notices provided by the College to involved parties as required by these procedures may be made electronically, in hard copy, or in person.

The Title IX Coordinator, College officials, or any individual hired by the College to facilitate these grievance procedures will communicate with the individual parties. The College will not communicate with a party's advisor unless the advisor has signed a FERPA statement and limited disclosure agreement.

## **I. FALSE COMPLAINT/FALSE INFORMATION**

The College will not tolerate false reporting and reserves the right to discipline members of the College community who knowingly bring false complaints of conduct prohibited by Title IX or provide false information during an investigation or hearing. No complaint will be considered "false" solely because it cannot be corroborated. If a Respondent or Complainant is determined to have knowingly provided false information during the investigation or sanctioning process, the Respondent or Complainant may be charged with committing an act of dishonesty relative to the College Student Handbook; and/or the false information may be considered an aggravating circumstance during the sanctioning phase. A finding of "not responsible" is not the same as an unfounded report or report determined to be a false report.

## **VII. INITIATING A COMPLAINT**

### **A. INDIVIDUAL**

A person, who believes they have experienced or witnessed an incident of conduct prohibited by Title IX, as defined in this Policy, may file a complaint against the person responsible for that conduct. “Person” may include any member of the College, including students, faculty, administrators, and staff members, or non-member.

Counterclaims by the Respondent of alleged conduct prohibited by Title IX may be made in good faith. As counterclaims can be made for purposes of retaliation, the College will assess whether the allegations are made in good faith to prevent any abuse of this Policy for retaliatory purposes.

The College will permit the filing of counterclaims, but maintains the right to delay the processing of counterclaims if necessary. While some allegations of counterclaims may be resolved through the same investigative process, the Title IX Coordinator reserves the right to determine if a separate procedure is necessary to proceed under the resolution process described in the appendices to this Policy, after the conclusion of the underlying allegation.

### **B. FILING REQUIREMENTS**

Under Title IX, “Complainant” means any individual who is alleged to be the victim of Title IX sexual harassment. In reference to procedures for the resolution of conduct within the scope of Title IX, “Complainant” is always the individual that experienced the conduct regardless of whether or not they are the individual that reported the conduct. Within the scope of Title IX complaints, it is this person that must sign the Formal Complaint.

When a Complainant decides to move forward with a formal grievance procedure, for conduct within the scope of Title IX the party will be subject to an intake meeting facilitated by the Title IX Coordinator, or their designee.

For a formal grievance procedure to commence the Complainant must sign a formal complaint. A “formal complaint” is a statement of the facts which includes the conduct alleged to violate the terms of this Policy, the Respondent and any identifying information available, and when possible, the location and timeframe of the alleged incidents. The statement should contain sufficient information to permit the Title IX Coordinator or the Deputy Title IX Coordinator to conduct a Title IX evaluation, and properly determine if and how the report is subject to the College’s Policy. The statement may not reflect every detail related to the allegations in the complaint as additional information may be discovered during the investigation.

For a report to undergo an investigation under Title IX a signed, formal complaint is required. Under Title IX, a “formal complaint” is a written document filed by a Complainant or signed by a Title IX Coordinator requesting that the College investigate allegations of Title IX sexual harassment against a Respondent.

## **1. Where a Complainant Requests No Formal Complaint Be Pursued**

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the College to honor that request, the College will offer informal resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by College, and to have the incidents investigated and properly resolved through these procedures.

The College strongly supports the complainant’s decision not to pursue a Formal Complaint under these procedures and desire for anonymity.

Where the complainant does not wish to pursue a Formal Complaint under these procedures, the College will honor the complainant’s wishes unless doing so would not adequately mitigate the risk of harm to the complainant or other members of the College community or doing so impacts the College’s ability to provide a safe and non-discriminatory environment for all members of the College community, including the complainant.

The Title IX Coordinator will consider the following factors, among others, when determining whether to honor the complainant’s wish that no resolution be pursued under these procedures:

1. Whether the responding party has a history of violent behavior or is a repeat offender;
2. Whether the incident represents escalation in unlawful conduct by the responding party from previously noted behavior;
3. The increased risk that the responding party will commit additional acts of violence;
4. Whether the misconduct was committed by multiple perpetrators;
4. Whether the responding party used a weapon or force;
5. Whether the complainant is a minor;

6. Whether the College possesses other means to obtain evidence such as security footage;
7. Whether available information reveals a pattern of perpetration at a given location or by a particular group; and
8. Whether the incident occurred in or affects the workplace (the College will generally be required to investigate allegations of workplace sexual harassment).

Regardless of whether the complainant chooses to file or participate in a Formal Complaint, the Title IX Coordinator will assist the parties with reasonable and available accommodations, which may include academic, housing, transportation, employment, and other accommodations. Supportive Measures provided to the complainant may not unreasonably burden the responding party.

Where no Formal Complaint has been filed and a Supportive Measure impacts the responding party, the responding party will be provided with written notice of the report, which includes, as known, the date, time, and location of the alleged prohibited conduct and the underlying factual allegations, including the identity of the complainant. Therefore, certain Supportive Measures may not be available if the complainant wishes to maintain anonymity.

The Title IX Coordinator may also take proactive steps, such as training or awareness efforts, to address sexual and related misconduct in a general way that does not identify the complainant.

Where the Title IX Coordinator determines that the College can honor the complainant's request that no Formal Complaint be pursued under these procedures, the College may nevertheless take other appropriate steps designed to eliminate the reported prohibited conduct, prevent its recurrence, and address its effects on the complainant and the College community. Those steps may include offering the complainant reasonable and available accommodations, conducting targeted prevention and awareness training, and/or providing or imposing other remedies tailored to the circumstances.

The complainant may later choose to pursue a Formal Complaint within the time limits for filing a Formal Complaint under these procedures.

Upon receipt of new or additional information, the Title IX Coordinator may reconsider the complainant's request that no Formal Complaint be pursued under these procedures and initiate the resolution process, as explained directly below.

Where the Title IX Coordinator determines that the College cannot honor the complainant's request that no Formal Complaint be pursued under these procedures, the Title IX Coordinator

will promptly initiate the resolution process under these procedures by making a signed, written Formal Complaint on behalf of the College. The Formal Complaint will name the complainant; thus, the complainant's identity will be revealed to the responding party.

The Title IX Coordinator will notify the complainant that the College intends to proceed with a Formal Complaint and will take immediate action as necessary to protect and assist the complainant.

The complainant is not required to participate in any proceedings that follow but will receive all notices issued under these procedures. However, if the complainant declines to participate in an investigation and/or the adjudicative process under these procedures, the College's ability to investigate meaningfully and respond to a report of prohibited conduct may be limited.

### VIII. PROCEDURES FOR ADDRESSING COMPLAINTS WITHIN THE SCOPE OF TITLE IX

The Office of Title IX is responsible for the oversight of investigations of conduct prohibited by Title IX wherein the person alleged of committing the misconduct (the Respondent) is a student, student group or employee of the College or third-party contractor.

#### i. **Persons Involved in the Procedures for Addressing Complaints within the Scope of Title IX:**

**Advisor of Choice ("Advisor"):** at stages under these procedures, students or employees participating as Complainant or Respondent may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend.

Advisors may be any person, including an attorney. The Advisor is not an advocate, except where explicitly stated by this Policy or its procedures, Advisors may not speak on the party's behalf, participate directly in the process, or otherwise interfere with meetings or proceedings. Advisors may help the party prepare written submissions, during hearings may confer with the party, and are responsible for conducting the cross-examination of the opposing party and witness(s) on behalf of the party. If a student does not have an advisor, one will be provided by the College.

**Hearing Facilitator:** The Hearing Facilitator is a non-witness, non-voting representative of the Office of Title IX who is responsible for administrative functions during the course of the hearing including but not limited to coordinating attendance of parties, panelists and witnesses, admission of parties or witnesses into meeting space, timing breaks, managing the meeting recording, and communicating with witness and parties. The Hearing

Facilitator will be present for all or part of the hearing, as needed, but will not attend or participate in the Hearing Panel's deliberations.

**Hearing Panel:** appointed by the Title IX Coordinator, or their designee, the Hearing Panel is responsible for participating in hearings, reviewing relevant evidence, and participating in deliberations to determine the findings (responsible or not responsible).

**Hearing Panel Chair:** appointed by the Title IX Coordinator, or their designee, the Hearing Panel Chair, is a member of the Hearing Panel who is responsible for hearing matters proceeding under the applicable procedures for resolution of reports of conduct within the scope of Title IX. The Hearing Panel Chair may be internal (employee of the College) or external (outside person hired by the College). The Hearing Panel Chair is responsible for facilitating hearings in compliance with state and federal laws. The Hearing Panel Chair is responsible for determining the relevance of questions, statements and/or evidence through the hearing procedure.

**Investigator:** appointed by the Title IX Coordinator after a Formal Complaint has been signed to meet with primary parties and witnesses to facilitate investigative interviews. Investigators are responsible for collecting evidence and drafting an investigative report. Investigator(s) may be internal (employees of the College), external (outside persons hired by the College), or a combination of both.

ii. **Evidentiary Considerations in the Investigation:**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent, or where permissible or required under New York State law.

iii. **Joint Hearings:**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings,

separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

iv. **Recording Hearings:**

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The panel, the parties, their Advisors, and appropriate administrators of the College will be permitted to listen to or watch the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

v. **Standard of Proof:**

The panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used.

**A. SANCTION GUIDELINES**

Any student found responsible for violating the policy provisions on sexual harassment will receive a sanction up to and including expulsion, depending on the severity of the incident and considering any prior disciplinary history. Recommended sanctions for violation of the policy relative to any charge of sexual harassment, including but not limited to those previously mentioned, include but are not limited to: disciplinary probation, loss of privileges, relocation of residence, restriction from facilities or activities, temporary or permanent residence hall suspension, mandated assessment and/or counseling, educational project, withholding of degree, suspension and/or expulsion.

The standard sanction for forcible rape is suspension or expulsion. The Title IX Coordinator reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating or aggravating circumstances with notice to the parties. Neither the initial decision-maker nor the appeal officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

Union College shall make a notation on the transcript of students found responsible after a conduct process that they were suspended after a finding of responsibility for a code of conduct violation

or indicating the student was expelled after a finding of responsibility for a code of conduct violation. An appeal in writing may be submitted to the Vice President of Student Affairs seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension. While notations for expulsion shall not be removed, if a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

## **B. RULES OF DECORUM**

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the complainant and respondent) and advisors, and are applicable to all hearings regardless of the modes of attendance, in-person or virtual.

1. To avoid disruption to the hearing, please do not leave the room or the virtual meeting during the hearing proceedings. Parties, their support person and advisors (“parties”), may leave quietly at the conclusion and before the presentation and cross-examination period begins.
2. To alleviate security concerns, no party shall bring purses, backpacks, briefcases, or other large bags to the hearing. Documents provided during the exchange will be available for both parties to use.
3. No hats, caps, or other non-medical headgear shall be worn, except for apparel required by religious observation. No apparel is permitted that is harassing or indicates bias or support for one party over another.
4. With the exception of the investigators from the responding office, any witness to a hearing must be kept in a space that is separate from the hearing proceeding.
5. Any party or witness will not engage in any activity that may be disruptive. Impermissible activities may include, but are not limited to, unnecessary conversation, loud whispering, texting or typing on personal devices, or newspaper or magazine reading.
6. Cellular telephones should be turned to the “OFF” setting during proceedings, or better yet, should not be brought into the room. Even phones on a “vibrate” setting can be disruptive.
7. Recordings of any type by the parties are prohibited.
8. In order to protect the security of the parties and the hearing participants, the hearing officer may enlist the assistance of the Union College Department of Campus Safety or other law enforcement personnel to enforce these rules and, if necessary, remove disruptive individuals from the room.

### Decorum by the Parties

1. No party will address the other for any reason unless given express permission by the hearing officer.
2. During cross examination, only a party’s advisor may speak or address the other party or their witnesses.

3. No party will interrupt the proceedings with applause, heckling, outbursts or other disruptive behavior.
4. Any threat of violence expressly made by either party will be immediately reported by the hearing officer to the appropriate office for review.

#### Decorum by Advisors

1. Questions must be conveyed in a neutral tone.
2. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
3. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
4. While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
5. The advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the hearing officer.
6. The advisor may not use profanity or make irrelevant ad hominem attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
7. The advisor may not ask repetitive questions. This includes questions that have already been asked by the hearing officer or the advisor in cross-examination. When the hearing officer determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.
8. Parties and advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would view as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

#### Warning and Removal Process:

The hearing officer shall have sole discretion to determine if the Rules of Decorum have been violated. The hearing officer will notify the offending person of any violation of the Rules.

The hearing officer shall have discretion to remove the offending person or allow them to continue participating in the hearing or another part of the process.

Where the hearing officer removes a party’s advisor, the party may select a different advisor of their choice, or accept an advisor provided by Union College for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A party cannot serve as their own advisor in this circumstance.

The hearing officer shall document any decision to remove an advisor in the written determination regarding responsibility.

For flagrant, multiple, or continual violations of this Rule, in one or more proceedings, advisors may be prohibited from participating in future proceedings at the institution in the advisor role on a temporary or permanent basis. Evidence of violation(s) of this agreement will be determined by the Title IX Coordinator or their designee.

Relevant Questions Asked in Violation of the Rules of Decorum:

Where an advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by the hearing officer simply because of the manner it was delivered. Under that circumstance, the hearing officer will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive

**manner by the advisor (or by a replacement advisor, should the advisor be removed for violation of the Rules). See, 85 Fed. Reg. 30331.**

### **C. NEW YORK STATE STUDENT'S BILL OF RIGHTS**

The rights listed below are afforded to all students reporting sexual violence, as well as all students accused of sexual violence, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, status as a domestic violence victim, or criminal conviction.

**All students have the right to:**

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent,

and/or their friends, family and acquaintances within the jurisdiction of the institution;

9. Access to at least one level of appeal of a determination;

10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and

11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

## **D. OTHER PROVISIONS**

### **1. Amnesty for Minor Violations**

The health and safety of every student at the College is of utmost importance. Union College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Union College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to {Institution's} officials or law enforcement will not be subject to Union College's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

### **2. Attendance Expectations**

To enable the most accurate and fair review of the facts, the Respondent is expected to attend and participate in meetings during the course of an investigation under this Policy. If an individual chooses not to attend one or more meetings, the charges will be reviewed on the basis of the information and evidence available, and a decision will be made. Although no inference may be drawn against a student for failing to attend a meeting or remaining silent, the process will proceed and the conclusion will be based on the evidence presented. No decision shall be based solely on the failure of the Respondent to attend one or more meetings, to participate in such meeting(s), or to answer the charges.

### **3. Sexual History**

Neither the past sexual history nor sexual character of either party will be considered in the

investigation or any other proceeding unless such information is determined by the Title IX Coordinator, Deputy Title IX Coordinator, or Hearing Chair to be specifically and directly relevant to a pending charge, or necessary and appropriate under federal or New York State law.

## **IX. TITLE IX COMPLAINTS AND CRIMINAL PROCEEDINGS**

### **A. REPORTING TO LAW ENFORCEMENT**

#### **1. Criminal report may be made by:**

- In an emergency, call 911,
- For non-emergency reporting call the Union College Campus Safety Department at (518) 388-6911, or
- Contacting local police in the city where the misconduct took place.

#### **2. The College will not notify law enforcement when it receives a report of conduct prohibited by Title IX unless:**

- A primary party of the report is a minor, and such report is required by law and the alleged
- conduct is of a criminal nature;
- The reported conduct is of a violent and ongoing nature, putting the entire community at risk; or
- The Complainant, in reporting an allegation to the College, requests that a copy of the report be shared with law enforcement.

A person filing a Title IX complaint may elect to go through the process for addressing conduct prohibited by Title IX as outlined in this Policy, file a report with law enforcement independently, or engage in both processes, either in succession or simultaneously.

When someone chooses to engage in a formal Title IX investigation at the College, that person cannot be required or compelled to report to law enforcement. The College recognizes that the decision to go through one or both processes is highly personal and can be difficult. The College Campus Safety Department will work to communicate ongoing processes for those engaged in a criminal complaint, and support measures will be offered by the College to all students involved in a criminal matter, as necessary, even when the criminal matter is not being pursued through the College policy.

## **B. INVESTIGATION AND EVIDENCE**

The investigation conducted by Union College and the College Title IX investigators is independent of any associated criminal process. An outcome in the College process is determined by a preponderance of the evidence standard, whereas criminal proceedings are determined based on a beyond a reasonable doubt standard. While the investigations are separate and the College does not automatically provide a copy of its investigative report to law enforcement, the applicable law enforcement agency may subpoena any and all documentation, materials, evidence, or recordings associated with a case file.

The College will adhere to any lawfully issued subpoena received by an appropriate law enforcement agency or body and will comply with New York State and federal laws relative to evidentiary disclosures.

## **X. PREGNANCY AND PARENTING**

The College prohibits discrimination against a students and employees on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions. Any rules concerning parental status may not be applied differently based on sex, gender, or orientation, and thus apply to all students.

### **A. STUDENT RIGHTS**

Under Title IX, students experiencing pregnancy or parenting, or any of the aforementioned conditions, have specific rights related to their educational access. The College must excuse absences due to pregnancy or childbirth for as long as your doctor says it is medically necessary. You have the right to return to the same academic and cocurricular standing. The College has the responsibility to ensure that all faculty members understand the Title IX requirements related to excused absences relative to pregnancy and parenting, including class participation, grades, and delayed due dates for assignments.

If you are experiencing pregnancy or parenting concerns that are affecting your academic schedule or standing, support can be provided by meeting with the College Title IX Coordinator or one of the Deputy Title IX Coordinators.