

# **Union College Gender-based Misconduct Policy**

## **I. INTRODUCTION**

The Union College mission calls on 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”), the College is committed to the prevention of and response to gender-based misconduct which interferes with the academic and 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 the education 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 Gender-based Misconduct Policy (“Policy”) protects students and employees against acts of sexual assault, sexual harassment, sexual exploitation, domestic violence, dating violence, stalking and misconduct in relation to a person’s sex, gender, or sexual orientation (collectively, “gender-based misconduct”) in College programs and activities as well as from retaliation for advocating for a right secured by the College Gender-based Misconduct 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 different sex or gender.

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

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

Gender-based misconduct is a violation of a person’s rights, dignity and integrity. An act of gender-based misconduct represents a fundamental failure by a community member to recognize and to respect the intrinsic worth and dignity of another. Acts of gender-based 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 gender-based misconduct in the classroom; social, recreational and residential environments; and the workplace. The College seeks to foster a climate free from gender-based 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 gender based misconduct, 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. All members of the College community are expected to contribute to the prevention and elimination of gender-based misconduct.

In order to foster a climate that encourages reporting of gender-based misconduct, the College will actively educate the community. It will respond to allegations promptly and will provide support measures to address the safety, emotional well-being, and academic needs of the individuals involved. Employees responding to reports of gender-based 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 and resolution.

## **B. PURPOSE OF POLICY**

The purpose of the Gender-based Misconduct 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 gender-based misconduct, whether as a Complainant/reporting party, a Respondent/responding party or a third party/witness.

When used in reference to actions or behaviors deemed to be gender-based misconduct by the College, “reporting party” refers to the party serving as the primary witness in a complaint alleging gender-based misconduct has occurred; and “responding party” refers to the individual who has been accused of gender-based misconduct.

“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 gender-based misconduct that is disclosed to the Title IX Coordinator, one of

the Deputy Title IX Coordinators or any other Responsible Employee of the College. A “Formal Complaint” is a signed allegation of gender-based misconduct filed against a student, employee or non-member that initiates the appropriate process.

At Union College, all employees are considered “responsible employees” and have the duty to report any acts of gender-based misconduct to the Title IX Coordinator or one of the Deputy Title IX Coordinators, unless they are designated as a “confidential resource.” 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 one of the Deputy Title IX Coordinators. 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 Title IX Coordinator, Deputy Title IX Coordinators and their roles;
- 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 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 full-time 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 this Policy can be found in Appendix A: Procedures for the Resolution of Reports of Gender-based Misconduct Conduct by Students The procedures for grieving a Formal Complaint against an employee can be found in the Policy Prohibiting Discrimination, Harassment and Retaliation in Employment.

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, who 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.

All College community members are responsible for their actions and behavior, whether the conduct in question occurs on the main campus or in another location. As a result, this Policy applies both to on-campus and off-campus conduct that has an actual or potential adverse impact on any member of the College community or 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 gender-based misconduct. 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.

### **III.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. To view the Union College Notice of Non-Discrimination and Equal Opportunity, click on the following link:

## **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 also is committed to assisting students, employees and non-members to make informed choices regarding how they choose to respond or participate in a response to gender-based misconduct. 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 gender-based misconduct, 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 gender-based misconduct 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 effectuate 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 Complainant and the Respondent.

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 gender-based misconduct 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 gender-based misconduct or other violence against the Complainant or others;
- Whether the gender-based misconduct was committed by multiple Respondents;

- Whether the gender-based misconduct 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 gender-based misconduct (e.g., security cameras, physical evidence); and
- Whether the Complainant's report reveals a pattern of gender-based misconduct (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 Complainant'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 gender-based misconduct 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. The College may or may not require a Complainant to participate in any investigation or disciplinary proceeding.

## **B. FREEDOM OF EXPRESSION/ACADEMIC FREEDOM**

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.

## **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.

#### **IV. DEFINITIONS OF GENDER-BASED MISCONDUCT**

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

Students are entitled to an educational environment that is free of discriminatory harassment. Union College's Gender-based Misconduct 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 and other gender-based misconduct that are prohibited under federal law, New York State law, and Union College policy. The definitions below were adopted in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well. Acts of sexual harassment or gender-based misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

## **1. Sexual Harassment:**

Federal law, New York State law and this Policy, define sexual harassment as any unwelcome verbal or physical conduct of a sexual nature that is sufficiently severe or pervasive to effectively alter or deny the individual reasonable access to College resources or that such conduct creates an intimidating, hostile, or sexually offensive environment for learning, working, or living on campus. Sexual harassment includes, but is not limited to, the following forms of harassment:

*Hostile environment harassment* is unwelcome conduct of a sexual nature that is sufficiently severe, persistent, or pervasive as to limit a person's ability to work or participate in a College program or activity.

*Quid pro quo harassment* occurs when a person with authority uses submission to or rejection of unwelcome sexual conduct as the basis for making academic or employment decisions affecting a subordinate or a student. This kind of harassment usually involves explicit or implicit threats of retaliation for refusing to submit to sexual advances.

### **Examples of harassment include the following:**

- The use of physical force or violence to restrict the freedom of movement of another person, or to endanger the health or safety of another person based on the person's race, color, etc.;
- Any type of conduct that has the effect of unreasonably interfering with an individual's work or academic performance or creates an intimidating, hostile, or offensive working or learning environment;
- Epithets (byname), slurs, or derogatory comments based on a person's race, color, etc. ● Unwelcome sexual propositions, invitations, solicitations and flirtations; leering; ● Unwelcome and inappropriate touching, patting, fondling, pinching or obscene gestures;
- Sexually suggestive objects, pictures, videotapes, audio recording, or literature, or computerized transmissions placed in a viewable area that may embarrass or offend individuals;
- In the case of co-workers or individuals in positions of authority, conduct of the nature set forth above when the effect unreasonably interferes with the ability of a person to perform their employment or academic responsibility, or when the effect is to create an offensive, intimidating and/or hostile working or learning environment for that person.

In the case of co-workers or individuals in positions of authority, conduct of the nature set forth above when the effect unreasonably interferes with the ability of a person to perform their employment or academic responsibility, or when the effect is to create an offensive, intimidating and/or hostile working or learning environment for that person.



Such unwelcome behavior has the potential to severely alter the condition of the victim's employment or academic surroundings and results in a work or educational environment that a reasonable person would find abusive or offensive.

It should be emphasized, however, that isolated instances (e.g., a single comment or joke) ordinarily will not constitute harassment unless it is repeated or egregious.

Harassment may not be present if the conduct is welcomed or encouraged. The College will take appropriate remedial action to address any inappropriate conduct, even if it does not meet the legal definition of harassment.

## **B. ADDITIONAL FORMS OF GENDER-BASED MISCONDUCT AT UNION COLLEGE**

Gender-based misconduct can include acts of sexual assault, intimate partner violence, domestic violence, dating violence, sexual exploitation and stalking. Gender-based misconduct may vary in its severity and consists of a wide-range of behaviors. The following descriptions represent behaviors and conduct that violate the College community standards and a person's rights, dignity and integrity.

1. Aiding or Facilitating: this charge is defined as aiding, facilitating, promoting, or encouraging the commission of a violation under this policy. Aiding or facilitating may also include failing to take action to prevent an imminent act known to the party the act to being commissioned, when it is reasonably prudent and safe to do so. Action may include directly intervening, calling the Union College Campus Safety department or local law enforcement, or seeking assistance from a person in authority.

2. Dating Violence or Intimate Partner Violence ("IPV"): this 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 victim. 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. Intimate partner violence generally describes violence or abuse by a person in an intimate relationship, who do not live together, share a child in common, or have an on-going or former partnership.

3. Domestic Violence: this is defined as a pattern of coercive and controlling behaviors and tactics used by one person over another to gain power and control. This may include verbal abuse, financial abuse, emotional, sexual, and physical abuse. Domestic violence occurs in heterosexual, as well as same-sex partnerships, and crosses all ethnic, racial, and socio-economic lines. Domestic violence describes physical, sexual, or psychological harm by a current or former partner, spouse or family member. Domestic violence does not require sexual intimacy.

Under New York State penal law there is no crime called “domestic violence.” Instead, crimes between intimate partners, family members or individuals living within the same household are handled by the courts as “family offenses.” Should a member of the campus community wish to file a criminal complaint for a family offense, the Campus Safety department can help support the student in filing the charge appropriately. Family offenses which encompass domestic violence or intimate partner violence under New York State penal law include, but are not limited to:

- Assault
- Stalking
- Harassment
- Aggravated harassment
- Reckless endangerment
- Sexual abuse or misconduct

4. Intimidation: this is defined as placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the person to actual physical attack.
5. Non-consensual Sexual Contact: this is defined as the touching of the private body parts of another person without the consent of that person or the forcible touching of the private body parts of another person.
6. Non-consensual Sexual Intercourse: this is defined as the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ on another person, without the consent of the person. This term is used to classify instances where the person was not of the age of consent; if the person was unable to consent because of temporary or permanent mental incapacity, including intoxication; or when the perpetrator has threatened, coerced, or exhibited a use of force against the other person. This term is used in gender-based misconduct cases to describe what is criminally referred to as rape.
7. Sexual Exploitation: this is defined as an act or acts committed through non consensual abuse or exploitation of another person’s sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage or any other non legitimate purpose. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses. Sexual exploitation may involve individuals who are known to one another, such as those engaged in an intimate or sexual relationship and/or individuals not known to one another. Examples include, but are not limited to:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Any form of non-consensual taking, sharing, showing or distributing images, photography, video; or audio recording of sexual activity or nudity, without the knowledge and consent of all parties involved;
- Prostituting another individual;
- Knowingly exposing another individual to a sexually transmitted disease or virus without their knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non- consensual sexual activity.

8. Stalking: intentionally engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to fear for their safety or the safety of others or cause that person to suffer substantial emotional damage. Examples include, but are not limited to, repeatedly following such person(s), repeatedly committing acts that alarm, cause fear, or seriously annoy such other person(s) and that serve no legitimate purpose, and repeatedly communicating by any means, including electronic means, with such person(s) in a manner likely to intimate, annoy or alarm him or her. Stalking does not require direct contact between parties and can be accomplished in many ways, including through the use of electronic media such as e mail or social media, or through electronic devices such as cell phones.

9. Voyeurism: surveilling, photographing, videotaping or electronically surveilling partially nude or nude person or persons, either in their entirety or in the targeting of the intimate parts of the body without the consent or permission of the subject or subjects.

#### **D. 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 gender-based misconduct 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.**

## **E. 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>

## **V. RESOURCES AND SUPPORT MEASURES**

### **A. OVERVIEW**

The College is committed to treating all individuals with dignity, care, and respect. Any individual affected by gender-based misconduct, 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 gender-based misconduct 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:

- i. 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;
- ii. Notice of Confidential Resources, including health care and mental health counseling services, on campus and/or within the local community;
- iii. 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.
- iv. 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.
- v. 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 gender-based misconduct. 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 gender-based misconduct 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 III.1) above.

### **C. 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 communication and

contact restrictions generally preclude in-person, telephone, electronic or third-party communications. 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 a 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 gender-based misconduct. 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 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 gender-based misconduct 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. 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.

Both the Respondent and Complainant, given the opportunity, upon request, for an institutional review of the need for and terms of an interim suspension, and to submit evidence in support of such request

Both the Complainant and the Respondent are given the opportunity, upon request for an institutional review of the need for and terms of an interim suspension, and to submit evidence in support of such request.

Either party may petition the Vice President for Student Affairs (VPSA) in writing to review the Title IX Coordinator’s decision to impose an emergency removal. The petitioning party may seek 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 modifying, or lifting the emergency removal, 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 with respect to an emergency removal should be set aside, the VPSA will instruct the Title IX Coordinator to vacate the prior decision. At that time, the Title IX Coordinator may impose alternate reasonable and appropriate emergency restrictions or supportive measures. The VPSA may, but is not required to, provide the Title IX Coordinator with guidance regarding appropriate alternate emergency restrictions or supportive measures. The VPSA will provide a written decision to the

parties and the Title IX Coordinator. The decision of the VPSA is final with respect to a petition regarding interim action/emergency removal.

## **VI. REPORTING**

The College is committed to providing a variety of welcoming and accessible means to report so that as many instances of gender-based misconduct will be reported as possible. The College also recognizes that the decision whether or not to report gender-based misconduct 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. Off-campus conduct that adversely affects the College or the community may also fall under this Policy.

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 gender-based misconduct. 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 a qualified sexual assault nurse examiner is available, 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 gender-based misconduct, 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 gender-based misconduct they receive or of which they become aware. Having a wide-range of individuals that can support a student in making a report of gender-based misconduct ensures that students can approach an employee they know and trust.

Resident Advisors are the only student-employees of the College who are considered “responsible employees” and have the responsibility to report information regarding conduct prohibited by Title IX of which they become aware while acting in their role as a resident advisor.

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

The College recognizes that a student or employee may choose to report gender-based misconduct to any trusted employee of the College. For example, a student may choose to confide in a resident advisor, 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 gender-based misconduct 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 gender-based misconduct.

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 gender-based misconduct 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 an act of gender-based misconduct. An individual may report the incident without disclosing their name, identifying the Respondent, or requesting any action. Depending on the level of information available about the incident or the individuals involved, however, the College’s ability to respond to an anonymous report may be limited.

The College offers a public reporting form that can be found at the link below:  
[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 gender-based misconduct 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 gender-based misconduct 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 gender-based misconduct, 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 gender-based misconduct has occurred for purposes of this Policy. In other words, conduct may constitute gender-based misconduct 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 gender-based misconduct 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 gender-based misconduct. 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 gender-based misconduct.

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 gender-based misconduct report or investigation. 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 gender-based misconduct 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.

## **VII. GENDER-BASED MISCONDUCT REVIEW**

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

The Title IX Coordinator oversees the College's review, investigation and resolution process for reports of gender-based misconduct and coordinates the College's compliance with federal and New York State laws that pertain to gender-based misconduct including. 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 gender-based misconduct, 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 gender-based misconduct 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 gender-based misconduct;
- 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;
- Coordinate training, education and prevention efforts; and
- 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 gender-based misconduct by either: a.

Offering supportive measures because the Complainant does not wish to proceed formally; and/or

b. Engage in an informal resolution; and/or

c. Proceed to a formal grievance process including an investigation and hearing; or

d. If after evaluation, the report is found to be without cause under this Policy, will 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 gender-based misconduct, its potential recurrence, or its effects.

## **C. INITIAL ASSESSMENT**

The College will address all reports of gender-based misconduct. The Title IX Coordinator will oversee the College 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 Deputy Title IX Coordinator will review any reports of alleged

gender-based misconduct and will evaluate if the conduct described within the report is subject to Title IX, Title VII, or the College's community standards as described in this Policy. 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:

- a. The Title IX Coordinator or Deputy Title IX Coordinator discussing safety and wellness needs with the Complainant to ensure 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.
- b. 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/>).
- c. 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.
- d. 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.
- e. 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 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.
- f. 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.
- g. 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.
- h. If a formal grievance process is preferred, the Title IX Coordinator will determine if the misconduct allegations falls within the scope of Title IX:



- i. If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, with the investigation to address:
  1. An incident, and/or;
  2. A pattern of alleged misconduct, and/or;
  3. A culture/climate issue, based on the nature of the complaint.
- ii. If it does not, the Title IX Coordinator will “dismiss” any aspect of the complaint outside of the scope of Title IX harassment and determine if the alleged conduct falls within the scope of the conduct defined to be a violation of the College’s community standards as described within this Policy. If the complaint is dismissed under Title IX but will proceed under the Gender-based Misconduct Policy, 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 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. The C.A.R.E. Team can aid in determining some or all of the following:

- a. If emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- b. Whether the Coordinator should pursue/sign a formal complaint absent a Complainant in the case a Complainant is unwilling or unable to participate;
- c. Whether the alleged conduct should be assessed in conjunction with a separate incident and/or a pattern of behavior or conduct and/or climate;
- d. If the alleged conduct was predatory in nature or related to potentially predatory conduct;
- e. If grooming behaviors or patterns of conduct were involved in the alleged conduct;
- f. Whether informal resolution would be possible, and if so, what mechanisms of informal resolution would be most successful;
- g. Whether to impose a transcript notation to the Respondent’s transcript; h. Assess appropriateness of sanctions/remedies (to be applied post-hearing); and/or
- i. 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 gender-based misconduct 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 gender-based misconduct 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 any way.

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 Office of the Dean of Students in writing of their anticipated return date when known. The Dean of Students Office can be reached via email at [DOS\\_office@union.edu](mailto:DOS_office@union.edu).

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

If the Respondent is a current student, and found responsible for a gender-based misconduct violation, a notation will be placed on the Respondent's transcript identifying the complaint. If the Respondent withdraws from the College while a gender-based misconduct 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.

## **G. 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.

## **H. 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 gender-based misconduct 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.

## **VIII. INITIATING A COMPLAINT**

### **A. INDIVIDUAL**

A person, who believes they have experienced or witnessed an incident of gender-based misconduct, 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 gender-based misconduct 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**

Relative to conduct in violation of the Union College community, as outlined within this Policy, the person bringing the allegation forward is called the “Complainant,” whether or not they are the alleged victim of the conduct. A Complainant under this Policy may be the Title IX Coordinator or their designee, or a third-party with knowledge of the alleged misconduct.

When a Complainant decides to move forward with a formal grievance procedure, for conduct either within the scope of Title IX or outside of it, the party will be subject to a formal intake.

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 this Policy a signed, “Formal Complaint” is required. 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 gender-based misconduct 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:

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

Where no Formal Complaint has been filed and a Supportive Measure impacts the Respondent, the Respondent 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 Respondent. 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.

## **2. Acceptance of Responsibility**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator, or their designee, decides that the individual is in violation of the Gender-based Misconduct Policy.

The Title IX Coordinator, or their designee, then determines appropriate responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community. The Title IX Coordinator will then refer the matter to the Office of Community Standards for the execution of sanctions, where appropriate.

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator, or designee, has determined appropriate sanction(s) in collaboration with the Office of Community Standards or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator, or their designee, has determined appropriate sanction(s) or responsive actions in collaboration with the Office of Community Standards, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome. The parties may still be able to seek informal resolution on the remaining allegations, subject to the stipulations above.

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.

### **3. 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 the College'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.

### **4. Persons involved in the Procedures for the Resolution of Reports of Gender-based Misconduct Against Students**

**The Office of Title IX is responsible for the oversight of investigations of conduct prohibited by this Policy wherein the person alleged of committing the misconduct (the Respondent) is a student or student group.**

Advisor of Choice (“Advisor”): at stages under these procedures, students 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 and during hearings may confer with the party. If a student does not have an advisor, one will be provided by the College.

Hearing Facilitator: the Title IX Coordinator, or their designee, will serve as the 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 witnesses 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 the single adjudicator or chair of the three-person Hearing Panel. The Hearing Panel Chair is responsible for hearing matters proceeding under the Procedures for the Resolution of Reports of Gender-based Misconduct Against Students. 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.



## **5. 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.

## **6. 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.

## **7. 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 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.

## **8. 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.

## **• 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 including a virtual waiting room.
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.
9. No party will interrupt the proceedings with applause, heckling, outbursts or other disruptive behavior.
10. Any threat of violence expressly made by a party will be immediately reported by the hearing officer to the appropriate office for review.

#### Decorum by Advisors

1. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
2. While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
3. 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).

## **IX. GENDER-BASED MISCONDUCT COMPLAINTS AND CRIMINAL PROCEEDINGS**

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

1. Criminal report may be made by:
  - Calling 911,
  - Calling 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 gender based misconduct 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 gender based misconduct 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. The filing of a complaint of gender-based misconduct 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 interim measures to protect the Complainant and the College community, if necessary; and/or (iii) implement disciplinary proceedings without regard to any pending criminal proceedings

## **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 student based on 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.