

## Procedures for the Resolution of Reports of Gender-based Misconduct Against Students

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Union College is committed to cultivating respect and understanding for all members of the Union College and broader communities, and it welcomes and supports an inclusive and measurably diverse college community. Union College does not discriminate on the basis of race, color, sex (including pregnancy), religion, creed, national origin (including ancestry), citizenship status, physical or mental disability (including AIDS), age, marital status, sexual orientation, gender identity and expression, military status, genetic predisposition, domestic violence victim status, or any other protected category under applicable local, state, or federal law.

Union College does not discriminate on the basis of sex in its educational, co-curricular, athletic, or other programs or in the context of admissions or employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

Union College is committed to the prompt and equitable response to any reports it receives of sexual and gender-based misconduct in order to eliminate any founded misconduct, prevent its recurrence, and address its effects on any individual or the community

Please note that the following procedure addresses sexual and gender-based misconduct, including but not limited to Sexual Harassment, Sexual Assault, Intimate-Partner Violence, and Stalking, and is intended to be in compliance with New York State Education Law 129-B (“Enough is Enough”).

## **I. General Rules of Application**

### **A. Effective Date**

The effective date of these procedures is on August 14, 2023. These procedures will apply in all cases where a Formal Complaint of conduct prohibited under these procedures is made on or after August 14, 2023.

Where the date of the alleged prohibited conduct precedes the effective date of these procedures, the definitions of prohibited conduct set forth in the College’s Gender-based Misconduct Policy in existence at the time of the alleged conduct will be used. These procedures, however, will be used to investigate and resolve all Formal Complaints made on or after the effective date of these procedures, regardless of when the conduct occurred.

## **B. Non-Discrimination in Application**

The requirements and protections of these procedures apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

## **II. Jurisdiction and Scope**

These procedures apply to reports of prohibited conduct by a student that do not fall within the jurisdiction and scope of another College policy and that meet the following criteria:

### **A. Nature of Complaint**

A report of conduct of prohibited conduct, as defined in the College's Gender-based Misconduct Policy, committed by a student.

### **B. Location of Incident**

These procedures will apply to prohibited conduct by a student that does not fall within the jurisdiction and scope of other procedures, regardless of the location of the conduct where the Title IX Coordinator or their designee determines that either:

- the alleged prohibited conduct has occurred in the context of a College program or activity; or
- the conduct poses a substantial threat to the College's educational mission or to the health or safety of College community members, including potentially contributing to or creating a hostile environment.

### **C. Identity of the Complainant**

This procedure will apply to individuals who have experienced or reported prohibited conduct, as that term is defined in the Gender-based Misconduct Policy, and who are barred from filing a Formal Complaint under other College procedures.

### **D. Identity of the Respondent**

This procedure will apply to students against whom a Formal Complaint has been filed under these procedures. Review the next section to understand what is considered a Formal Complaint.

### **III. Time limits to File Formal Complaints**

#### **A. Formal Complaint**

For the purposes of these Procedures, “Formal Complaint” means a document – including an electronic submission - filed by a Complainant with a signature or other indication that the Complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging prohibited conduct against a Respondent as defined in the College’s Gender-based Misconduct Policy and requesting that the College initiate an investigation of the alleged prohibited conduct, pursuant to these procedures.

#### **B. Eligibility to File a Formal Complaint**

Complainants who are alleging prohibited conduct against a student and who are barred from filing a formal complaint under other College procedures may file a formal complaint pursuant to these procedures.

#### **C. Timeliness of a Formal Complaint**

To promote timely and effective review, the College strongly encourages Complainants and other persons with knowledge of possible violations of this policy to make reports as soon as possible. A delay in reporting may affect the College’s ability to gather relevant and reliable information, contact witnesses, investigate thoroughly, and respond meaningfully. It may also affect the College’s ability to take disciplinary action against a student who has engaged in prohibited conduct.

While prompt reporting is encouraged, the College will consider as timely any Formal Complaint that is filed under these procedures as long as the Respondent is a “student,” as defined by the Student Handbook.

If the Respondent is no longer a student at the time the Formal Complaint is submitted and the College is, thus, unable to pursue resolution under these procedures, the College will provide support for the Reporting Party or Parties and, as feasible, take appropriate steps to end any prohibited conduct, prevent its recurrence, and address its effects.

### **IV. The Response to a Report of Prohibited Conduct**

## **A. Initial Assessment**

Upon receipt of a report of alleged prohibited conduct, the Title IX Coordinator<sup>1</sup> or Deputy Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. The Title IX Coordinator or Deputy Title IX Coordinator will evaluate the report for cause. If alleged actions do not present any potential violation of the Gender-based Misconduct Policy, but may violate other policies, the Coordinator or Deputy Coordinator will work with the student to appropriately reallocate the report. Where the conduct reported, being evaluated in the light most favorable to the reporting party, does not meet the definition for prohibited conduct either within the Gender-based Misconduct Policy or any other College policy, the report may be dismissed. If the report is reallocated or if a Formal Complaint is dismissed, the parties will be notified in writing via their College email address.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

### ***1. Where the Complainant’s Identity Is Known***

Where the identity of the Complainant is known, the Title IX Coordinator or Deputy Title IX Coordinator will ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet promptly with the Title IX Coordinator to discuss those resources and options.

In the initial assessment and meeting or correspondence with the Complainant, the Title IX Coordinator or Deputy Title IX Coordinator will:

- Assess the Complainant’s safety and well-being and offer the College’s support and assistance through available resources;
- Inform the Complainant that the Title IX Coordinator or Deputy Title IX Coordinator will maintain the Complainant’s privacy to the greatest extent possible and disclose information only as necessary pursuant to these procedures;
- Inform the Complainant of their right to seek medical treatment (including a sexual assault forensic examination) and explain the importance of obtaining evidence and preserving forensic and other evidence;

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<sup>1</sup> Throughout these procedures, various College officials, such as the Title IX Coordinator, are assigned responsibility for performing specific functions. Named officials are authorized to delegate responsibility to other appropriate College officials and non-College consultants except where such delegation contravenes College policy. Additionally, named officials and their designees may consult with appropriate College officials, College Counsel, and subject-matter experts.

- Inform the Complainant of their right to contact law enforcement, be assisted by College officials in contacting law enforcement, or decline to contact law enforcement, and their right to seek a protective order;
- Inform the Complainant that the criminal justice system uses different standards of proof and evidence than these procedures and that any questions about whether the reported prohibited conduct constitutes a penal law violation should be addressed by law enforcement;
- Inform the Complainant about College and community resources, including counseling, health, and mental health services; victim advocacy; procedural advocacy; legal resources; visa and immigration assistance; student financial aid; and other resources both on campus and in the community, and how to request or contact such resources;
- Inform the Complainant of the right to seek appropriate and available Supportive Measures and how to request such measures;
- Inform the Complainant of the right to file a Formal Complaint and seek resolution under these procedures; provide the Complainant with an overview of these procedures, including Informal Resolution or Alternative Resolution (where appropriate); and inform the Complainant of the right to withdraw a Formal Complaint at any time and to decline or discontinue resolution under these procedures at any time, but that declining to participate in an investigation and/or the adjudicatory process under these procedures may limit the College's ability to investigate meaningfully and respond to a report of prohibited conduct;
- As possible and appropriate, ascertain the Complainant's preference for pursuing formal resolution, Informal Resolution, or neither under these procedures, and discuss with the Complainant any concerns or barriers to participating in any investigation and resolution process under these procedures;
- Explain that the College prohibits retaliation, that retaliation constitutes prohibited conduct under the College's Procedures, and that the College will take appropriate action in response to any act of retaliation;
- Inform the Complainant of their rights afforded under the Gender-based Misconduct Policy; and
- Communicate with appropriate College officials to determine whether the report triggers any Clery Act obligations, including the entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

## ***2. Where the Complainant's Identity Is Unknown***

Where a report is filed but the identity of the Complainant is unknown, the Title IX Coordinator will assess the nature and circumstances of the report, including whether it provides information that identifies the potential Complainant, the potential Respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate

steps to respond to the report of prohibited conduct consistent with applicable federal and state laws and these procedures.

## **B. The College's Actions Following an Initial Assessment**

Upon completion of the Initial Assessment, the Title IX Coordinator or Deputy Title IX Coordinator will determine the course of action under these procedures as follows:

### **1. *Where the Complainant Seeks Resolution Under These Procedures***

In any case where the Complainant reports prohibited conduct and requests resolution under these procedures, the Complainant must provide the Title IX Coordinator a written, signed formal complaint describing the facts alleged.

### **2. *Where the Complainant Requests That No Formal Complaint Be Pursued Under 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 or Deputy Title IX Coordinator will consider the following factors, among others, when determining whether to honor the Complainant's wish that no resolution be pursued under these procedures:

1. Whether the Respondent has a history of violent behavior or is a repeat offender;
2. Whether the incident represents escalation in unlawful conduct by the Respondent from previously noted behavior;
3. The increased risk that the Respondent will commit additional acts of violence;
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; and
7. Whether available information reveals a pattern of perpetration at a given location or by a particular group.



Regardless of whether the Complainant chooses to file or participate in a Formal Complaint, the Title IX Coordinator or assigned Deputy 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.

### ***3. College Determination That the Complainant's Request(s) Can Be Honored***

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.

## **V. Notice to the Parties of College Actions**

The Title IX Coordinator will promptly inform the Complainant of any actions undertaken by the College that will directly impact the Complainant, including the filing of a Formal Complaint.

The Title IX Coordinator will promptly inform the Respondent of any actions undertaken by the College that will directly impact the Respondent, including the filing of a Formal Complaint or the imposition of Supportive Measures that would directly impact the Respondent, and provide an opportunity for the Respondent to respond to such action(s). Supportive Measures become effective when notice of the Supportive Measures is provided.

### **A. Advisors and Support Persons**

At all stages under these procedures, students participating as Complainant or Respondent in this process 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, who is not a party or witness or otherwise involved in the case.

The Advisor of Choice is not an advocate. Advisors of Choice may not speak on the party's behalf, participate directly in the process, or otherwise interfere with meetings or proceedings.

Throughout the proceedings, advisors may help the party prepare written submissions and may confer with the party. Advisors may not submit documents on behalf of a party.

By accepting the role of Advisor of Choice, the advisor agrees to comply with the rules and processes set forth in the College's Gender-based Misconduct Policy and these procedures, including rules regarding process privacy.

The College will not interfere with the parties' rights to have an Advisor of Choice and fully expects advisors to adhere voluntarily to the College's Gender-based Misconduct Policy and these procedures. In extreme cases, where either the Title IX Coordinator or Adjudication Chair determines that an advisor's conduct undermines the integrity of the Gender-based Misconduct Policy or these procedures, the advisor will be prohibited from continuing to serve as advisor in that case. The affected party will be permitted to obtain a substitute advisor. If a party does not have an advisor at the hearing, they will be provided one by the College.

## **VI. Written Submissions**

For all written submissions permitted by these procedures the documents must be submitted by the parties. Written submissions from an advisor or other individual made on behalf of a party will not be included in the investigative or hearing records.

Where a form is available for a written submission, the party must use the form for the submission. Where no form is required, the parties are asked to comply with the instructions for written submissions relative to the applicable portion of these Procedures. Where required by these procedures, the party must sign the written submission.

## **VII. Preservation of Information and Tangible Material**

Preservation of information and tangible material relating to alleged prohibited conduct is essential for investigations under these procedures as well as law enforcement investigations.

Therefore, all persons involved in these procedures, whether as the Complainant, the Respondent, or a witness, are encouraged to preserve all information and tangible material relating to the alleged prohibited conduct. Examples of evidence include electronic communications (e.g., email and text messages), photographs, clothing, and medical information.

In the case of medical information, prompt examinations can be crucial to the collection of forensic or other medical evidence. Individuals who believe they have experienced sexual assault or other forms of prohibited conduct are strongly encouraged to seek immediate medical attention.

### **VIII. Obligation of Parties Relative to Information Known to be False**

At all stages of the process, all participants are expected to provide truthful information to the best of their abilities and have an obligation not to provide information known to be false to any persons involved in the response to gender-based misconduct including, but not limited to, the Title IX Coordinator, Deputy Title IX Coordinators, investigator(s), or Adjudication Panelists. The College recognizes the difference between an unfounded report and grievance procedures which result in an outcome of not responsible.

### **IX. Notice to Parties Upon the Issuance of a Formal Complaint**

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of prohibited conduct. Such notice will occur as soon as practicable after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

#### **A. Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the Colleges Gender-based Misconduct Policy and Procedures;
- Notice of the allegations potentially constituting prohibited conduct, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the

incident, if known, including the Complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.

- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.

## **B. Ongoing Notice**

If, in the course of an investigation, the institution decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise prohibited by these procedures, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

## **C. Discretionary Dismissal of a Formal Complaint**

The Title IX Coordinator may dismiss a Formal Complaint brought under these procedures, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The Respondent is no longer a student or employed by the College; or,
- If specific circumstances prevent the College from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

## **D. Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

## **X. Consolidation of Reports, Formal Complaints, and Hearings Under These Procedures**

Generally, at the discretion of the Title IX Coordinator, multiple reports or Formal Complaints under these procedures arising out of the same factual circumstances may be joined in one investigation when:

- There is more than one Complainant or Respondent;
- Where a cross complaint has been filed by a Respondent against a Complainant.
- There are multiple, factually-related allegations and a joint hearing is deemed equitable by the Title IX Coordinator.

In determining whether to consolidate multiple reports or Formal Complaints the Title IX Coordinator will consider whether consolidation is likely to result in reliable and more efficient outcomes without causing prejudice to a party or parties or confusion for the fact finders.

Where a matter is consolidated for investigation, the investigator(s) will issue a single investigative record and report and the matter will be adjudicated in one hearing. All parties to a consolidated complaint will receive the same written determination.

In all hearings involving multiple Respondents, the Adjudication Panel will consider singly the sanctions and remedies appropriate for each Respondent.

If the alleged conduct, if true, includes conduct that would constitute prohibited conduct under these procedures and conduct that would cover prohibited conduct under the Title IX procedures, the Title IX procedures will be applied.

If the alleged conduct, if true, includes conduct that would constitute prohibited conduct under these procedures and other College policy or procedures (excluding the Title IX procedures), the College retains discretion in determining which policy or procedure will be applied in the investigation and adjudication of all of the allegations.

## **XI. Alternate Resolution of a Formal Complaint**

At any time after a Formal Complaint has been filed and before a hearing commences, the parties may seek to resolve a report of prohibited conduct through Alternate Resolution, an administrative process. Participation in Alternate Resolution is entirely voluntary; the Title IX Coordinator will neither pressure nor compel either party to participate in the process or to agree to any specific terms.

In every case, the Title IX Coordinator has discretion to determine whether the matter is appropriate for Alternate Resolution and to determine the appropriate terms.

Alternate Resolution will not involve mediation, or any face-to-face meetings, between the Complainant and the Respondent.

Before the Title IX Coordinator approves the Alternate Resolution process or the terms of any Alternate Resolution, the Title IX Coordinator will determine that they have sufficient information about the matter to make these decisions.

Before the Alternate Resolution process commences, both the Complainant and the Respondent must agree to explore Alternate Resolution as a potential means of resolution.

The parties are strongly encouraged, although not required, to consult with their advisors and any support persons during the entire Alternate Resolution process.

If the process is terminated for any reason, the matter will be resolved pursuant to the Formal Complaint resolution process under these procedures. For this reason, the investigator(s) will not participate in Alternate Resolution.

The Title IX Coordinator will oversee the Alternate Resolution process and have access to all College records in the matter, including any records or reports prepared during an investigation.

The Title IX Coordinator will consult separately with both parties and recommend to the parties the terms of a potential Alternate Resolution agreement. Such terms may include, but are not limited to, any sanctions or remedies that could be imposed by a decision maker after a hearing under these proceedings.

Both parties must agree to the terms before an Alternate Resolution agreement becomes effective.

At any time before a written agreement is effective, the Complainant or the responding may withdraw from the Alternate Resolution process, and the Title IX Coordinator may also, at their discretion, terminate the process. The Title IX Coordinator will promptly notify the parties, in writing, of a termination of the informal resolution process and the formal complaint will be investigated and adjudicated pursuant to these procedures.

If the Respondent agrees to an Alternate Resolution that provides for a suspension, withdrawal, or dismissal (i.e. expulsion) from the College, there will be a transcript notation consistent with College policy.

If both parties are satisfied with the Title IX Coordinator's recommendation, the matter will be resolved with a written agreement. The Title IX Coordinator will provide each party, separately, with a copy of the proposed agreement for the party to review, sign, and return.

Once a party has returned the signed agreement to the Title IX Coordinator, the terms of the agreement will become effective and the Title IX Coordinator will promptly notify both parties in writing that the agreement is final.

Once the agreement is effective, the parties may not appeal the agreement. The parties are expected to honor and comply with the terms of the Alternate Resolution. Noncompliance may be subject to proceedings under the Campus Code of Conduct.

If the process is terminated and the matter resolved pursuant to the Formal Complaint resolution process, neither the Title IX Coordinator nor the parties will disclose to the Adjudication Chair, Adjudication Panel, or Appeal Panel either the fact that the parties had participated in the Alternate Resolution process or any information learned during the process.

## **XII. The Parties' Participation in the Investigation and Hearing**

Both the Complainant and the Respondent may decline to participate in the investigation and/or hearing. However, the College may continue without a party's participation, reaching findings and issuing sanctions.

The College will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

The College will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisor acts reasonably in providing available dates and works collegially to find dates and times that meet all schedules.

The College's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under these procedures, and the College cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The College will not be obligated to delay a meeting or hearing under this process more than five (5) calendar days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the College. If a party's Advisor of Choice fails to fulfill their obligations or comply with the College's Policy

and procedures for adjudicating gender-based misconduct, the College reserves the right to remove the Advisor.

#### **A. Declining to Participate in the Investigation**

If a party declines to participate in the investigation, the party will forfeit the opportunity to present evidence, including physical evidence and statements on their behalf. While the College cannot compel a party or witness to participate in the investigation, the College may proceed without any individual. If an individual does not participate in the investigation but wishes to appear at the hearing, the College will not prohibit that person from doing so, however, new evidence may be remanded to the investigator(s) at the discretion of the Adjudication Panel Chair /Adjudication Panel. Evidence not submitted within the investigative report or an addendum to the investigative report will not be considered by the Adjudication Panel Chair/Adjudication Panel.

#### **B. Declining to Attend or Participate in the Hearing**

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

Neither party is required to attend a hearing for the hearing to proceed. If, despite being notified of the date, time, and location of the hearing, either party is not in attendance, the institution may still proceed with the hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered during the investigation and at the hearing.

While the Adjudication Panel/Chair may draw a negative inference against a party due to that party's absence from a hearing, the determination regarding responsibility cannot be based solely on a party's absence from the hearing. The burden of proof must still be supported by evidence and cannot be established only by the absence of a party.

### **XIII. Investigation of a Formal Complaint**

#### **A. Overview of Investigations of a Formal Complaint**



The investigation is designed to be timely, thorough, and impartial and to provide for a fair and reliable gathering of the facts. All individuals involved in the investigation, including the Complainant, the Respondent, and any third-party witnesses, will be treated with sensitivity and respect.

The investigation will generally include individual interviews of the Complainant, the Respondent, and relevant witnesses. Upon completion of the investigation, the investigator(s) will prepare a final investigative record and an investigative report. The investigative record is a compilation of all evidence directly related to the allegations in the formal complaint and may include statements by the parties and witnesses as well as other evidence gathered by the investigator(s). The investigative report will explain the scope of the investigation and summarize the relevant evidence gathered. The investigator(s) does not make any findings or recommendations as to responsibility. In the event of a hearing, the final investigative record and report become part of the hearing record.

The Complainant and the Respondent will have an equal opportunity to participate in the investigation, including an equal opportunity to be heard, submit evidence, and suggest witnesses who may have relevant information. Specifically, during the investigation, each party will have the opportunity to:

- be interviewed by the investigator(s);
- review their own interview statements prior to the statements being distributed to the other party and included in a draft investigative record;
- provide evidence to the investigator(s);
- suggest witnesses to be interviewed by the investigator(s);
- propose questions to be asked of witnesses and the other party; and
- Review a draft investigative record and comment on it, in writing, before the investigator(s) finalizes the record and prepares an investigative report.
- Review the investigative report, and provide comment on it, prior to the hearings.

At the hearings, the Adjudication Panel will rely upon the final investigative record as well as any additional statements and information provided to the Adjudication Chair/Panel pursuant to the procedures set forth below.

The College and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of these procedures has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the College and does not indicate responsibility.

## **B. Time Frame of and Time Limitations During the Investigation**

The investigator(s) designated by the Title IX Coordinator, will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

Throughout the investigation, both parties will receive reasonable notice of any meetings at which their attendance is requested and the parties will be updated at regular intervals on the status of the investigation.

The investigator(s) will establish reasonable time limits for the various stages of the investigation, including meetings and deadlines for any submissions or responses, and the parties must adhere to these time limits.

The parties may request extensions that will be granted, if reasonable, at the discretion of the investigator(s). Extensions granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted, and failure to meet deadlines will result in forfeiture of a party's ability to participate in that aspect of the investigation.

If a party declines or fails to participate in a meeting or interview, provide evidence, or suggest witnesses, the party will have waived their right to do so upon the issuance of the final investigative record and report.

## **XIV. Investigative Interview Process**

The investigator(s) will gather information from the Complainant, the Respondent, and other individuals who have information relevant to the alleged policy violation.

The parties will have the opportunity to request in writing witnesses they would like the investigator(s) to interview and questions and topics they would like the investigator(s) to ask witnesses, themselves, and/or the other party.

The investigator(s) has the discretion to determine whether any proffered witnesses have information that is relevant to the allegations in the formal complaint, and, accordingly, the investigator(s) will determine which witnesses to interview.

Investigative interviews with the parties and any witnesses may be audio or video recorded.

At the start of an interview session, the investigator(s) will inform an interviewee that the session is being audio recorded.

Parties and witnesses will receive copies of audio recordings of their own interviews.

The parties will be provided with written summaries, but not audio recordings, of all witness and other party interviews.

The parties may listen to audio recordings of interviews of the other party and any witnesses during business hours, with access facilitated by the Title IX Coordinator. Parties must make their request to listen to audio recordings in writing to the Title IX Coordinator.

All persons being interviewed, including the parties, are prohibited from recording interviews.

In the event of a failure rendering an audio recording of an interview inaudible in whole or in part, the investigator(s) will either reconstruct the interview with input from the interviewee or re-conduct the interview, as the investigator(s) deems necessary. The reconstructed interview statement will become part of the investigative record. The failure will not constitute grounds for appeal.

#### **A. Evidentiary Materials**

The investigator(s) will gather available relevant evidentiary materials and evidence that is directly related to the allegations in the formal complaint submitted by the parties, including physical evidence, documents, communications between the parties, and electronic records and media as appropriate.

The parties will have the opportunity to request in writing the evidentiary materials they would like the investigator(s) to seek to obtain.

The investigator(s) has the discretion to determine whether the requested evidentiary materials are relevant to the allegations in the formal complaint, and, accordingly the investigator(s) will determine what evidentiary materials to seek to obtain.

#### **B. Expert testimony:**

If the investigator(s) determines that expertise on a topic will assist the Adjudication Panel in making its determinations, upon the investigator(s)'s own initiative or at the request of a party, the investigator(s) may include in the investigative record medical, forensics, technological, or other expert testimony and materials (such as writings and recordings) that the investigator(s) deems relevant and reliable. For the purposes of inclusion in the

investigative report, the investigator(s) has the discretion to determine the relevance of any expert testimony and materials, and, accordingly, the investigator(s) will determine what, if any, expert testimony and materials will be included in the investigative record. Requested expert testimony or materials not included in the investigative record will not be considered by the Adjudication Panel.

### **C. Relevant Evidence and Questions**

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of these procedures:

1. Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior unless:
  - a. They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
  - b. They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.
2. Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
3. Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.
4. Character Evidence
5. Polygraph Evidence

The investigator(s) will also exclude and, as necessary, redact content that is impermissible under applicable law.

Exclusions and redactions will be noted and thereby become part of the investigative record.

Excluded or redacted content not included in the investigative record will not be considered by the Adjudication Panel.

### **D. Sexual History**

Neither the past sexual history nor sexual character of either party will be considered in the investigation or any other proceeding unless such information is determined by the Title IX Coordinator, Deputy Title IX Coordinator, or Hearing Panel Chair to be specifically and

directly relevant to a pending charge, or necessary and appropriate under federal or New York State law.

#### **E. Draft Investigative Record and the Parties' Review**

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the College in making a determination regarding responsibility;
2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator(s) to consider prior to when the parties' time to inspect and review evidence begins.

The institution will send the evidence made available for each party and each party's advisor, if any, to inspect and review (through an electronic format or a hard copy). The Institution is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will each have ten (10) calendar days from delivery of notice to that party's College email address or other College address to inspect and review the evidence and submit a written response by email to the investigator(s). The investigator(s) will consider the parties' written responses before completing the Investigative Report.

The investigator(s) will provide copies of the parties' written responses to the investigator(s) to all parties and their advisors, if any.

The investigator(s) has discretion whether to conduct any additional requested meetings, interviews, or questioning.

The parties may request extensions that will be granted, if reasonable, at the discretion of the Title IX Coordinator or the Title IX Coordinator's designee. Any extension granted to one party will be granted to the other party.

Delays simply to prolong the process will not be permitted and failure to make submissions within ten (10) calendar days, computed as set forth above, or within any approved extensions will result in a forfeiture of the right to do so later.

#### **F. Inclusion of Evidence Not Directly Related to the Allegations**

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator(s) not to be directly related or relevant to the allegations in the Formal Complaint will be included in the appendices to the investigative report. Those appendices that include evidence that is not directly related or relevant to the allegations in the Formal Complaint will not be provided to the Adjudication Panel, but will be shared with the appeals panel.

#### **G. Remand of Investigative Record to Title IX Coordinator**

During the course of the investigation the investigator(s) may remand the investigative record to the Title IX Coordinator, or the Title IX Coordinator's designee, for review and/or revision of the Formal Complaint. If the Title IX Coordinator or designee, upon review, identifies additional or different charges that appear to be appropriate based on the conduct alleged or described by either the parties or witnesses to the investigator(s), or, if the conduct described by the parties or witnesses is not within the scope of conduct prohibited by the Gender-based Misconduct Policy as initially believed to be, the Title IX Coordinator or designee will notify the parties in accordance with these procedures as to the issuance of notice of new charges or discretionary dismissal. If after review the Title IX Coordinator or designee does not believe that the Formal Complaint needs to be amended, the investigative procedures will continue under these procedures.

#### **H. Final Investigative Record and Report**

After review and consideration of the parties' comments to the draft investigative record, the investigator(s) will issue a final investigative record and an investigative report.

##### *a. Content of the Final Investigative Record and Investigative Report*

The investigative record is a compilation of all of the evidence directly related to the allegations in the formal complaint, and may include investigative interviews, evidentiary materials, and expert testimony and materials, if any.

The Investigative Report will explain the scope of the investigation and summarize the relevant evidence gathered during the investigation. At their discretion, the investigator(s) may identify contested and uncontested facts, highlight inconsistencies, and address relevancy of evidence. The Investigative Report is not intended to catalog all evidence obtained by the investigator(s), but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator(s) may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

The investigative report is not evidence.

*b. Review of the Final Investigative Record and Investigative Report*

Upon completion, a draft investigative record and investigative report will be provided to the parties and their advisor in electronic or hard copy. Each party will have five (5) calendar days from the delivery of notification to that party's College email address or other College address to review and submit comments, in writing, on the draft investigative report. The parties' written comments and requests will become part of the final investigative record.

The investigator(s) has discretion whether to conduct any additional requested meetings, interviews, or questioning as-needed after the written submissions by the parties.

Any request by a party for an extension to review the investigative record will be granted, if reasonable, at the discretion of the Title IX Coordinator or the Title IX Coordinator's designee. Any extension granted to one party will be granted to the other party.

Delays simply to prolong the process will not be permitted and failure to make submissions within the five (5) calendar days as specified above or any approved extensions will result in a forfeiture of the right to do so later.

Once the parties have waived or submitted their comments on the draft report, the investigative report will be shared with the Adjudicative Chair/Adjudicative Panel for their initial private deliberation. If additional questions are submitted by the Adjudication Panel after their initial deliberation, investigators may add an addendum to the report and/or request additional meetings, interviews, or collect additional evidence.

If the investigator(s) amend the report in any way, it will be resubmitted to the parties for review and comment within a timeframe that is identical in duration to the timeframe for review of the draft report prior to amendment.

The draft report will be finalized by the investigators and resubmitted to all parties and the Adjudication Chair/Panel prior to the hearing.

## **XV. Hearings**

### **A. Overview of Hearing Process**

Findings of responsibility or non-responsibility are made through a live hearing process conducted by the Adjudication Panel Chair who may serve as a single adjudicator, or as a member of a three (3) member Adjudication Panel. The Title IX Coordinator will determine if a hearing will be before a single adjudicator or a three (3) member panel. (Usage hereafter of "Adjudication Panel/Chair" is meant to refer to the adjudication panel applicable to the case, e.g. single adjudicator or three persons.) While parties will have the same hearing format and be subject to the same procedures, hearings are facilitated separately for each party. A non-voting Hearing Facilitator may be present at the hearings to assist with administrative tasks including, but not limited to, technology or communication needs. The party's hearing is intended to provide the party with a fair opportunity to present relevant information to the Adjudication Panel/Chair and enable the Adjudication Panel/Chair to make informed decisions regarding responsibility. The hearing is not intended to be a secondary investigative interview, and questions by the Adjudication Panel/Chair will be presented primarily to help the Panel/Chair clarify understanding, draw conclusions of fact, and assess the credibility of parties and/or witnesses. New evidence is not allowed.

Prior to meeting with each party, the Adjudication Panel/Chair will review, in private, the investigation report. In this review, the Panel/Chair will consider the statements gathered by the Investigator(s) and the investigation report, along with the responses to the report (if any) from the Complainant and Respondent. After internal discussion, if applicable, the Panel will decide whether there are additional questions that need to be asked. If so, the Panel/Chair will remand those questions to the investigator(s). Any additional information collected will be submitted to the Complainant and Respondent before the hearing pursuant to the investigative report procedures described above.

Formal rules of evidence will not apply.



Evidence that was excluded or redacted from the investigative record as impermissible under these procedures or applicable law will not be admissible at the hearing.

Typically, the format of the hearings will be as follows:

- Introduction by the Adjudication Chair/Adjudication Panel. The Adjudication Chair will explain the hearing process, address any necessary procedural issues, and answer questions.
- Opening statement by the primary party (either Reporting Party or Responding Party) Complainant.
- Questions, if any, by the Adjudication Chair/Adjudication Panel to the party in attendance.
- Closing statements by the primary party (either Reporting Party or Responding Party)

If the Adjudication Panel/Chair calls a witness to a hearing session, it will take place separately from the hearings of the primary parties. Witnesses may not submit an opening or closing statement. Witnesses may not submit a mitigation or impact statement.

Live hearings are not public. The live hearing may be conducted with all parties physically present in the same geographic location, or, at College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually via a remote conferencing platform, such as Zoom. This technology will enable participants simultaneously to see and hear each other. At its discretion, the College may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded or, at the College's discretion, stenographically recorded and a transcript of the proceedings will be made. That recording or transcript will be made available to the parties for inspection and review upon written request to the Title IX Coordinator.

The parties are entitled to provide brief written opening statements and oral and/or written closing statements.

The parties will also be asked to submit a written Impact/Mitigation Statement, which may be submitted up to the start of the hearing to the Title IX Coordinator.

The Adjudication Panel Chair/Adjudication Panel will conduct all questioning.

## **B. Presumption of Non-Responsibility and Standard of Proof**

The Respondent will be presumed “not responsible” unless and until an Adjudication Panel/Chair determines the Respondent is responsible.

The Adjudication Panel/Chair will determine whether the Respondent is responsible by a majority vote using a preponderance of the evidence standard. This means that to find the Respondent responsible for any prohibited conduct, a majority of the Adjudication Panel/Chair must be satisfied, based upon the hearing record, that it is more likely than not that the Respondent engaged in conduct that is prohibited by the Gender-Based Misconduct Policy. If the Adjudication Panel/Chair does not make a finding of responsibility, it will dismiss the case. If the Adjudication Panel/Chair finds that the Respondent is responsible under these procedures, the Adjudication Panel/Chair will consider appropriate sanctions and remedies.

### **C. The Adjudication Panel and Hearing Panel Chair**

The Adjudication Panel will include faculty and staff members selected through an appropriate process established by the College. No member of the Adjudication Panel will also have served as the Title IX Coordinator, Title IX investigator(s), or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case. No member of the Adjudication Panel will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to the particular case.

The Adjudication Panel will be filled or the Adjudication Panel Chair appointed through an appropriate process established by the College without input by the parties except that the parties will be provided an opportunity to present any claim of bias or conflict of interest before the hearing begins pursuant to procedures set forth in paragraph D. below.

The Adjudication Panel members will receive annual training as required by law, including instructions on serving impartially, determining relevance, and applying laws related to sexual history of Complainants, and will be familiarized with technology to be used at the hearing.

The Adjudication Panel Chair will provide guidance to the Adjudication Panels, when applicable, and serve as a gatekeeper by making evidentiary and procedural rulings both prior to and during the hearing.

The Adjudication Panel/Chair will draft the findings of fact and rationales for determinations regarding responsibility or non-responsibility

### **D. Notice of Hearing**

At the completion of an investigation, if a case is referred to a Adjudication Panel/Chair for a hearing, a Notice of Hearing will be sent to the parties as soon as practicable. The notice will include the charges at issue; a brief summary of the alleged prohibited conduct; the date, time, and place/modality of the hearing; the name of the Adjudication Chair; and, if determined, the Adjudication Panel members.

If the notice does not include the name of the Adjudication Panel members, the parties will be so notified, in writing, at a later time, prior to the hearing.

All efforts will be made to provide the Notice of Hearing no later than seven (7) calendar days prior to the hearing and to schedule the hearing as soon as practicable.

Upon receipt of written notice or delivery of such notice to a party's College email address or other College address of the Adjudication Chair and Adjudication Panel members<sup>2</sup>, if a party believes that they have a potential conflict of interest with either a Adjudication Panel member or Adjudication Chair, the party should notify the Title IX Coordinator, who will forward the notification to the Adjudication Chair. The notification must be in writing, made within two (2) calendar days of the notice, and include facts substantiating the claim of conflict. The Title IX Coordinator has discretion whether to remove a member of the Adjudication Panel or the Adjudication Panel Chair; all members of the Adjudication Panel have the ability to recuse themselves.

#### **E. Request to Reschedule Hearing**

Either party may request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted to the Title IX Coordinator at least three (5) calendar days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason for the delay. Given the number of individuals involved in a hearing, and the attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Adjudication Chair may also reschedule a hearing, without a request by the parties, when there is reasonable cause to do so.

#### **F. Newly Discovered Evidence**

If after the issuance of the final investigative record and investigative report and prior to the issuance of the Adjudication Panel/Chair decision, a party seeks to present a witness or introduce evidence not requested prior to the hearing and not disclosed to the investigator(s), the Adjudication Panel Chair may grant such request upon a showing that the witness or evidence is newly discovered and will provide material information that is directly related to

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<sup>2</sup> Notice of the Adjudication Chair may precede notice of the Adjudication Panel members.

the allegations in the formal complaint, material. It also must be shown that the witness or evidence could not have been discovered during the investigation with due diligence.

Where an Adjudication Chair permits a party to introduce a newly discovered witness or evidence the Adjudication Chair will reschedule or adjourn the hearing for the investigator(s) to investigate the newly discovered witness or evidence.

The Adjudication Chair will also re-open the pre-hearing submission process, as appropriate, so that the parties may respond to the new information.

The Adjudication Chair has the authority to remand questions raised by new evidence directly to the investigator(s). When new evidence is discovered and referred to the investigator(s), the investigator(s) will draft an addendum to their previously submitted report for review by both parties prior to resubmission to the Adjudication Panel. This includes appeals made on the premise of new evidence in which the Appeals Panel may, in its sole discretion, remand the matter back to the Adjudication Panel Chair to commission such further investigation so that the Adjudication Panel/Chair can supplement the decision of the Adjudication Panel/Chair after considering any new evidence resulting from the additional investigation.

### **G. Pre-Hearing Submissions by the Parties**

Prior to a hearing, and upon providing the parties with copies of the final investigative record and report, the Title IX Coordinator will instruct the parties, in writing, that in addition to providing comments on the final investigative record and report, they will also have the opportunity to make the following pre-hearing submissions:

#### *a. Written Opening Statements*

The parties may prepare a written opening statement, not to exceed 2500 words.

This statement is the parties' opportunity to tell the Adjudication Panel/Chair why there should be a finding in the party's favor.

In presenting their side, the parties should be responsive to the investigative record by directly addressing and responding to specific information contained in the investigative record and citing specific page numbers.

The parties may want to call the Adjudication Panel/Chair's attention to specific interview statements or evidentiary materials contained in the investigative record. Again, the parties should include specific page citations to the final investigative record.

The parties may not add or address information not contained in the investigative record, as the Adjudication Panel/Chair will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The Adjudication Panel/Chair does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements.

Opening statements should be submitted no less than twenty-four (24) hours prior to the hearing to the Title IX Coordinator via email at [titleix@unon.edu](mailto:titleix@unon.edu).

*b. Witness Requests and Proposed Questions*

All interview statements contained in the final investigative record become part of the hearing record and are before the Adjudication Panel. If a party wants the Adjudication Panel to hear directly from a witness, the party must submit a written request to the Title IX Coordinator, or their designee, within the ten (10) calendar days of the issuance of the final investigation report and record to such party personally or by delivery to that party's College email address or other College address. Such a request should include the following for each proposed witness:

1. An explanation of why the individual's presence is relevant and helpful to the Adjudication Panel/Chair in determining responsibility. For example, the party should explain why a witness's interview statement contained in the final investigative report is not sufficient for the Adjudication Panel/Chair to make its finding. The parties may request only witnesses who were interviewed by the investigator(s) during the investigative process.
2. A list of proposed questions for or general topics that the party would like the Adjudication Panel/Chair to pose to the other party, witnesses, or themselves, at the hearing. By indicating proposed questions and topics at this juncture, the parties will help the Adjudication Chair/Panel understand why the parties would like to hear from specific individuals. It will also allow the Adjudication Chair/to make advance rulings on the relevancy of the questions or topics proposed.

The Adjudication Panel/Chair may call for a witness to appear at an independent hearing at their discretion. If the Panel/Chair find the requests made by the party to be duplicative to the material contained within the investigative report or irrelevant to the questions before them they may decline to call an additional hearing.

Within the timeframe for each submission, the parties may request extensions that will be granted, if reasonable, at the discretion of the Title IX Coordinator, or the Title IX Coordinator's designee. Any extension granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted.

All Pre-Hearing Submissions are optional but waived if not completed by the stated deadlines, including any approved extensions.

Additional Submission by the Parties:

*c. Impact/Mitigation Statement*

The parties will be permitted, but not required, to prepare a written Impact/Mitigation Statement relevant to any sanctions. The parties may submit the statement up until the start of a hearing. The statements would be distributed to the Director of Community Standards, or the Director's designee, only if the Adjudication Panel/Chair finds the Responding Party responsible. The statements would be distributed to both parties only upon a finding of responsibility, and, after sanctions have been determined by the Director of Community Standards. The statements would be included in the final written decision circulated to both parties.

*d. Closing Statements*

The parties may provide both oral and written closing statements. This is the opportunity for the parties to marshal the evidence in the hearing record and suggest inferences and conclusions.

The parties may not add or address information not contained in the hearing record, as the Adjudication Panel/Chair will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The Adjudication Panel/Chair does not consider these issues.

The Adjudication Chair will establish a time limit for brief oral closing statements, typically around five (5) minutes.

The Adjudication Chair will also set the schedule for submission of written closing statements. The parties should assume that deliberations will commence immediately following the hearing, in which case the parties will be expected to submit written closing statements shortly after the oral closing statements. If there is an adjournment for deliberations, the Adjudication Chair may provide the parties with limited additional time to submit their statements, typically within one hour of the conclusion of the hearing.

Each party's written statement will be limited to 2000 words and to the evidence contained in the investigative record and hearing. The written statements will be distributed to the other party, Adjudication Chair, and Adjudication Panel for their review.

## **H. Determination on Findings of Responsibility**

After closing arguments, the Adjudication Panel/Chair may begin its deliberations. Deliberations will be in private and they will not be recorded in any manner.

The Adjudication Panel/Chair will make a decision based upon a majority vote. Deliberations will be completed as expeditiously as possible.

### *a. Deliberations on Finding of Responsibility; General Considerations for Evaluation of Evidence*

Determinations of responsibility will be based on the relevant evidence accepted and reviewed by the Adjudication Panel. Determinations regarding responsibility may be based in part, or entirely, on testimony, documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decision-maker.

Adjudication Panel members or Chairs, shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Credibility judgments should not rest solely on whether a party or witness' testimony is non-linear or incomplete, or solely on whether the party or witness is displaying stress or anxiety.

The Adjudication Panel/Chair will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

A witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Adjudication Panel may draw an adverse inference as to that party or witness' credibility.

*b. Deliberations on Sanction after a Finding or Responsibility*

If the Adjudication Panel/Chair that finds the Respondent responsible it will notify the Director of Community Standards, or the Director's designee, in writing of their findings which shall include an assessment of all mitigating and aggravating factors. The Director of Community Standards will be responsible for reviewing the investigative record in its entirety.

The Director of Community Standards will impose sanctions and/or disciplinary measures that are consistent with the College's sanctioning practices in accordance with the Gender-based Misconduct Policy and in consideration of the student's conduct record while at Union College. Except when a sanction of expulsion is imposed, remedies should be designed to restore or preserve equal access to the institution's education program or activity after the Respondent has served any suspension and otherwise complied with the requirements imposed by any sanctions or disciplinary measures.

Prior to deliberating on sanctions and remedies, the Title IX Coordinator will distribute to the Director of Community Standards any written Impact/Mitigation Statements previously submitted by the parties, subject to any redactions required by law.

If the Respondent has a Union College disciplinary record, a known disciplinary record from another institution, or a known criminal conviction, prior to deliberating on sanctions and remedies, the Director of Community Standards, or the Director's designee, will review these records solely for the purposes of sanctions. It will not be shared with the Reporting Party.

In determining sanctions and remedies, the Director of Community Standards, or the Director's designee will consider:

- the severity of the prohibited conduct;
- the circumstances of the prohibited conduct;
- the impact of the prohibited conduct and sanctions and remedies on the Complainant;
- the impact of the prohibited conduct and sanctions and remedies on the community;
- the impact of the prohibited conduct and sanctions and remedies on the Respondent;



- prior misconduct by the Respondent, including the Respondent's previous school disciplinary record, both at Union College and elsewhere, and any criminal convictions;
- the goals of the College's Gender-based Misconduct Policy and these procedures; and
- any other mitigating, aggravating, or compelling factors.

The Director of Community Standards or the Director's designee, may impose one or more of the following sanctions and remedies:

- Measures similar in kind to the Supportive Measures specified under these procedures.
- Appropriate educational steps (such as alcohol or drug education, reflection papers, counseling, or directed study).
- Restrictions or loss of specified privileges at the College for a specified period of time.
- Oral warnings.
- Written reprimands.
- Disciplinary probation for a stated period.
- Suspension from the College for a stated period not to exceed two (2) years, or indefinitely with the right to petition the Adjudication Panel in writing at any time for readmission after the academic term following the academic term in which the suspension occurred.
  - Such petition will be submitted to the Title IX Coordinator no later than April 1 if the petition is for readmission for the fall semester and by November 1 if the petition is for readmission for the spring semester.
  - If the Title IX Coordinator agrees with the Respondent's petition, after consulting with appropriate professional colleagues and receiving approval of the Adjudication Chair, the Title IX Coordinator may permit the readmission without the petition being considered by the Adjudication Panel.
  - If the Adjudication Panel denies the petition, the Respondent may not petition again until the next semester and, in any event, may not petition for readmission for the same semester denied by the Adjudication Panel.
  - While on such suspension, the student may not obtain academic credit at Union or elsewhere toward the completion of a Union degree.
- Dismissal (i.e., expulsion) from the College.

The Adjudication Panel and/or Director of Community Standards may also recommend to the Title IX Coordinator that the College take measures on campus to remedy the effect or prevent the recurrence of such prohibited conduct.

Sanctions and remedies will be effective immediately unless otherwise specified by the Director of Community Standards

### **I. Components of the Written Determination Regarding Responsibility**

The written determination regarding responsibility will be issued simultaneously to all parties through their College email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions, including the rationale, for each section of the Code of Conduct, if any, the Respondent has or has not violated.
5. The College's procedures and permitted reasons for the Complainant and Respondent to appeal (described below in "Appeal").
6. The determination of responsibility shall be supplemented by a statement of, and rationale for, any disciplinary sanctions imposed on the Respondent. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant.

### **J. Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the College within fourteen (14) calendar days of the completion of the hearing.

### **K. Finality**

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

### **L. Hearing Record**

Unless the College elects to create a stenographic transcript, an audio and/or video recording will be made of all hearings, but not of deliberations. The parties may listen to any recording of the hearing during business hours at a secure and private campus location, with access facilitated by the Title IX Coordinator.

In the event of any failure rendering the recording of the hearing inaudible in whole or in part, the record will be recreated as necessary, whether in its entirety or for any inaudible portions, with input from the parties, any witnesses whose testimony is at issue, the Adjudication Panel, and Adjudication Chair. Such failure will not constitute grounds for appeal.

Individuals appearing before the Adjudication Panel/Chair, whether as a party or witness, are prohibited from recording any portion of the hearing.

Adjudication Panel members are also prohibited from recording any portion of the hearing.

The hearing record will include: the audio recording (or stenographer's transcript if no audio recording is made) of the hearing, the Adjudication Panel/Chair's decision, the final investigative record and report, the parties' pre-hearing submissions, the written witness list, written opening and closing statements, written submissions permitted by these procedures made during the hearing, and the parties' Impact/Mitigation Statements (if a finding of responsibility is made). The hearing record may also include a transcript of the hearing if one is created stenographically in lieu of an audio recording. A transcript of any audio recording may not be made unless required for court review in an Article 78 proceeding.

### **M. Sanction Guidelines**

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

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

Union College shall make a notation on the transcript of students found responsible after a conduct process that they were “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” An appeal in writing may be submitted to the Vice President of Student Affairs seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension. While notations for expulsion shall not be removed, if a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

## **XVI. Appeals**

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal to the Title IX Coordinator via email at [titleix@union.edu](mailto:titleix@union.edu) within ten (10) calendar days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution’s own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or Adjudication Panelist or Adjudication Chair had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcome of the matter.
- The sanctions or remedies are not commensurate with the injury/violation or are unjust.

The appeal statement must set forth:

- the determination(s) being appealed,
- the specific ground(s) for the appeal, and
- the facts supporting the grounds.

The appeal statement will be limited to 3,500 words. Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Failure to submit an appeal within the ten (10) calendar days or any approved extension constitutes waiver of the right to appeal.

The submission of an appeal stays any sanctions that could potentially be impacted by the appeal while the appeal is pending. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the institution will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals will be decided by an Appeals Panel appointed by the Title IX Coordinator who will be free of conflict of interest and bias, and will not serve as investigator(s), Title IX Coordinator, or hearing decision maker in the same matter.

The Appeal Panel will establish a reasonable schedule for issuing a written decision, typically no later than fourteen (14) calendar days after receipt of the parties' submission or the time for submission has expired.

Any decision will be based solely upon the hearing record and, in appropriate cases, upon a showing of new evidence relevant to the ground for appeal.

The decision must be by a majority vote of the Appeal Panel and will include the rationale for the Appeal Panel's decision.

The Appeal Panel may affirm the decision of the Adjudication Panel/Chair or sustain any of the above-specified grounds for appeal, in which case the Appeal Panel may:

- reverse a finding;
- change a sanction or remedy;
- remand a case to the original Adjudication Panel/Chair, if possible, for a new hearing or remand a case to a newly composed Adjudication Panel/Chair if there were procedural violations; or
- remand a case to the original Adjudication Panel/Chair to direct the original investigator(s), if possible, to conduct a supplementary investigation or to direct to a new investigator(s) to conduct such investigation if there were procedural violations in the investigation.

If the Appeal Panel calls for the admission of new evidence, if possible, it will remand the case to the Adjudication Panel/Chair from which it originated for a supplementary hearing to consider new evidence.

Upon remand from the Appeal Panel, as necessary and possible, an Adjudication Panel/Chair may remand a case to the investigator(s) from which it originated for further investigation.

After any remand to the Adjudication Panel/Chair, a new determination will be made by such Adjudication Panel/Chair supplanting or replacing the Adjudication Panel/Chair's original determination, as the Adjudication Panel/Chair deems appropriate. The process on any remand will be the same process originally provided the parties, an investigation and hearing, limited to consideration of new evidence where the remand is made solely for the purpose of such consideration.

The outcome of the appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

### **XVII. Transcript Notations and Withholding Degrees**

Pursuant to the Office of the College Registrar transcript notation policy for student conduct matters, the following actions will result in a permanent transcript notation for a student:

- dismissal (i.e., expulsion) after a finding of responsibility;
- suspension after a finding of responsibility; and
- withdrawal from the College while a Formal Complaint is pending.

If the underlying finding of responsibility is vacated for any reason, the transcript notation will be removed.

The College need not award degrees and a degree will not be awarded to the Respondent while a Formal Complaint under these procedures is pending. The College may withhold awarding a degree otherwise earned until the adjudication process set forth in these procedures is complete, including the satisfaction of any sanctions imposed.

The College will temporarily note the Respondent's transcript once a Formal Complaint is made pursuant to these procedures. The College will temporarily note the Respondent's transcript if the Respondent has been temporarily suspended pursuant to these procedures. These temporary notations may not be appealed and will be removed upon resolution of the underlying matter.

### **XVIII. Retaliation**

The College will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of prohibited conduct under these procedures, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that come from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

