Definitions Related to Sexual Harassment and Sexual Misconduct

SEXUAL HARASSMENT: Unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or academic status, (2) submission to or rejection of such conduct by an individual is used as the basis of employment or academic decisions affecting that individual, or (3) such conduct is sufficiently severe, pervasive or persistent that it has the effect of unreasonably interfering with an individual’s work or academic performance or creating an intimidating, hostile, or offensive working, educational, or social environment. Sexual harassment includes a full range of coercive and unwelcome behaviors, such as sexually suggestive, demeaning or graphic comments, unwelcome sexual advances or sexual contact, sexual intimidation through physical threats, and other verbal, visual, or physical conduct of a sexual nature.

SEXUAL VIOLENCE: This is a broad term that encompasses any attempted or completed act of violence, either physical or psychological, carried out through sexual means or by targeting sexuality, including unwanted sexual comments or advances, verbal harassment, sexual assault or abuse, sexual exploitation, and rape. The perpetrator of sexual violence may be a stranger, acquaintance, friend, family member, or intimate partner.

SEXUAL ASSAULT: Any nonconsensual physical contact of a sexual nature perpetrated against another person, including touching the sexual or other intimate parts of another person without their consent or forcing an individual to touch the genitals of another person.

SEXUAL MISCONDUCT: State law defines various violent and/or non-consensual sexual acts as crimes. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. The issue in any case is not the gender or gender identity of the persons involved but the acts. Intoxication of the perpetrator cannot be used as a defense to a charge of sexual misconduct.

Colgate has defined categories of sexual misconduct:
It should be noted that the university uses the term ‘sexual misconduct’ to address behaviors like rape and sexual assault. The use of this term is not intended to diminish or minimize a victim’s experience, but is instead a recognition that the university has no authority to determine that a crime occurred. The university does not view sexual misconduct as a lesser form of misconduct than rape or sexual assault.

- **Sexual Misconduct I:** The sexual penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, forcibly or without consent or where the victim is incapable of consent due to mental or physical incapacity. Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact, or genital to mouth contact. Sexual Misconduct I also includes non-forcible sexual intercourse with a person who is under the statutory age of consent (which in New York is age 17).
• **Sexual Misconduct II:** Any intentional sexual contact, however slight, with an object or bodily part, by a person upon another person that is without consent. This includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner. Sexual Misconduct II also includes any disrobing of another or unwelcome exposure from one person to another without consent.

• **Sexual Exploitation:** Colgate University uses the term “sexual exploitation” to refer to a situation in which a person takes non-consensual or abusive sexual advantage of another, and the conduct does not fall within the definitions of Sexual Misconduct I or II. Examples of sexual exploitation include, but are not limited to:
  - Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).
  - Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without or beyond the limits of the photographed person’s consent).
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection.
  - Administering alcohol or drugs (such as “date rape” drugs) to another person without his or her knowledge or consent.

**CONSENT:** Sexual activity or contact must be based on **mutual consent** to the **specific sexual activity.** Consent is knowing, voluntary and clear permission by word or action, by all participants to a sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.

A person cannot consent if that individual is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the individual respondent was intoxicated and, therefore, did not realize the incapacity of the other.

**Incapacitation** is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of the sexual interaction). Colgate’s policy also covers a person whose incapacity results from mental disability or physical restraint.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. Further, past consent to engage in sexual activity cannot be presumed to be consent to sexual activity in the future. The existence of consent is based on the
totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

**RELATIONSHIP VIOLENCE:** Relationship violence (also known as intimate partner violence, dating violence or domestic violence) refers to a pattern of behavior in which an individual uses physical violence, coercion, threats, intimidation, isolation or other forms of emotional, sexual, verbal and/or economic abuse to control their current or former intimate partner. Relationship violence can occur within heterosexual and same sex relationships, and there are many ways that one person can exert power and control over a partner. Victims of abuse are constantly in a state of tension, "walking on eggshells," or "second-guessing" the abuser to anticipate what might trigger anger or an increase in violence. And yet, most abuse survivors describe the emotional abuse as being far worse than the physical violence, largely because they begin to feel "crazy," like they are losing their minds. Because they become isolated from their family and friends, their only reality check is the abuser. Thus, reality becomes distorted. This is why it's so important to stay in touch with anyone you may know who is in an abusive relationship; the more isolated they become from their support system, the more dangerous their situation becomes.

- **DATING VIOLENCE:** Dating violence refers to a pattern of behavior in which an individual uses physical violence (hitting, punching, kicking, etc.), coercion, threats, intimidation, isolation or other forms of emotional, sexual, verbal and/or economic abuse to control their current or former intimate partner. Intimate partner violence can occur within heterosexual and same sex relationships, and can happen to a person of any gender.

- **DOMESTIC VIOLENCE:** Domestic violence refers to physical violence, or other forms of emotional, sexual, verbal and/or economic abuse between spouses or former spouses, cohabitating romantic partners or individuals who were formerly cohabitating romantic partners, individuals who share a child in common, or others in a family relationship.

**STALKING:** Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress. Stalking behavior may include but is not limited to repeated, intentional following, observing or lying in wait for another; or using “spyware” or other electronic means to gain impermissible access to a person’s private information; repeated, unwanted, intrusive, and frightening communications from the perpetrator by phone, mail, email, text, etc.; making direct or indirect threats to harm an individual or the individual’s relatives, friends, or pets; damaging or threatening to damage the property of the targeted individual. Stalking can be a form a sexual harassment when the person stalked is made to feel sexually uncomfortable or vulnerable as a result of the activity.
Stalking can happen to a person of any gender, and may also include family members, friends, or co-workers. Although most stalking takes place between people who have known each other intimately, stalkers may also target casual acquaintances or random victims, and can stalk their victims for days, weeks, or even years. Intimate partner violence stalkers, as a category, constitute the most dangerous and potentially lethal group of stalkers. Abusers often feel that their victims belong to them, are theirs to control or to punish for trying to leave, and rationalize their inappropriate behavior by blaming the victim of their obsession.

**CYBERBULLYING:** This can be defined as threatening behavior or unwanted advances directed at another using the Internet, e-mail and/or other forms of online and electronic communications.

**BULLYING:** Bullying is an act of aggressive behavior that intentionally seeks to hurt another person, physically or mentally. Bullying is characterized by an individual behaving in a certain way to gain power over another person and involves an imbalance of power and/or strength.