

## University Policy on Harassment

**a. Sexual Harassment** At its faculty meeting held on December 1, 1986, the faculty passed a resolution supporting the *Final Report of the Committee on Sexual Harassment*. The complete report may be obtained upon request through any of the following offices: the Dean of the Faculty, the Dean of the College, or the Human Resources Department

The final report states, in part:

“Colgate University explicitly prohibits harassment of one member or group of the community by another member or group. Students, staff, administrators, and faculty are entitled to a professional working environment. Those in positions of responsibility must exercise a sensitivity that precludes abusive or unprofessional actions. In particular, faculty and supervisors must avoid relationships that can compromise their evaluations of students and supervisees. Discrimination, coercion, and harassment, especially sexual harassment, have no place in the University.”

Both the Equal Employment Opportunity Commission and the New York State Division of Human Rights regard sexual harassment as a form of sex discrimination and, therefore, as an unlawful discriminatory practice. The EEOC offers the following guideline for defining “sexual harassment”: “Harassment on the basis of sex is a violation of Section 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (c) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”

Colgate accepts the EEOC definition of sexual harassment, amended to address the special needs of an academic community, which consists not only of employer and employees but of students as well.<sup>9</sup> The amended definition is as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature constitutes 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 such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work or academic performance or creating an intimidating, hostile, or offensive working, educational, or social environment.

Faculty and administrators need to be especially sensitive to the power/authority relation in their interactions with students. Actions or remarks which emphasize the sexuality or sexual identity of a student can take on a proportion that they would not have in other contexts, one that could ultimately impair the student’s access to the educational opportunities available at Colgate. Furthermore, amorous relations between teacher and

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<sup>9</sup> Also of relevance is the Office of Civil Rights 2001 statement on sexual harassment “Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties, Title IX,” which can be found at <http://www.ed.gov/about/offices/list/ocr/docs/shguide/index.html>.

student or between administrator and student are fundamentally asymmetrical and contradict both professional ethics and Colgate policy.

**b. Other Forms of Harassment** Colgate University is committed to treating all members of the University community in an equitable manner. Students, staff, administrators, and faculty are entitled to a professional working and educational environment. Colgate is committed to providing a work and educational environment free of harassment. Consistent with the university's policy on academic freedom (Section III.B) however, Colgate's harassment policy is not meant to inhibit or prohibit discussions inside or outside of the classroom that include controversial or sensitive matters.

Colgate's harassment policy explicitly prohibits any form of illegal harassment, by any member or group of the community, that creates a hostile environment. A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent or pervasive so as to interfere with or limit the ability of an individual to participate in or benefit from programs or activities.<sup>10</sup> Colgate condemns and will not tolerate harassment against any employee or student because of race, color, sex, pregnancy, religion, creed, national origin (including ancestry), citizenship status, physical or mental disability (including AIDS), age, marital status, sexual orientation, status as disabled veteran or veteran of the Vietnam era, or any other protected category under applicable local, state or federal law, such as opposing discrimination or participating in any complaint process at the Equal Employment Opportunity Commission or other human rights agencies.

**c. Confidentiality** Colgate will make every effort to handle complaints and investigations with sensitivity to both the rights of the person who complains and the rights of the accused, and will endeavor to maintain confidentiality throughout the investigatory process, to the extent practicable and appropriate under the circumstances. However, in order to conduct an effective investigation, Colgate may need to discuss the allegations with the alleged harasser or other potential witnesses. Records relating to harassment and discrimination complaints and investigations will be maintained only in confidential files, and all individuals receiving information about the allegations will be warned of the consequences of retaliation.

**d. Retaliation and Disciplinary Action** Retaliation against an individual for alleging harassment or for assisting in providing information relevant to a claim of harassment is a serious violation of Colgate's policy and will be treated as another possible instance of harassment. Acts of alleged retaliation should be reported immediately and will be promptly investigated. Colgate is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Colgate will take prompt remedial or disciplinary action against any member of the community who has been found to engage in harassing or discriminatory behavior or

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<sup>10</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department Of Education Office For Civil Rights, Racial Incidents And Harassment Against Students At Educational Institutions Investigative Guidance. The document is available at <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>.

retaliation. For employees, remedial action may include any measures that Colgate believes will be effective in ending the misconduct and correcting the effects of the harassment. Responsive action may include, for example, mandatory training or referral to counseling, and disciplinary action such as warnings, reprimands, withholding of a promotion or pay increase, reassignment of the offender, temporary suspension without pay, or termination of employment. The Student Handbook describes disciplinary action against students. Deliberately false and malicious accusations of harassment, as opposed to complaints which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action, up to and including termination.

### **3. Procedure for Dealing Informally with Complaints of Discrimination or**

**Harassment** Colgate encourages, but does not require, individuals who believe they are being harassed by a member of the community to promptly notify the person that his or her behavior is unwelcome. If for any reason an individual does not wish to confront that person directly, or if such a confrontation does not successfully end the harassment, the individual should notify the Dean for Institutional Diversity, a Harassment Advisor, a supervisor, or a dean, who may, if the individual so requests, speak to the alleged harasser on the individual's behalf. An individual alleging harassment should be aware, however, that Colgate may decide it is necessary to take action to address the harassment beyond an informal discussion. This decision will be discussed with the complainant. The best course of action in any case will depend on many factors and, therefore, the informal procedure will remain flexible. However, attempting to deal with a complaint informally is not required before filing a formal complaint (see section 4, below) nor does it preclude filing such a complaint.

**Harassment Advisors** In addition to existing supervisors and deans, a group of Harassment Advisors has been designated to provide advice and guidance to individuals who believe that they have been the targets of harassment. These advisors have been specially trained so that they are familiar with procedures and can be particularly helpful in explaining the definitions of harassment, identifying the various procedures available (including direct action, mediation, and/or complaint investigation), and providing information about psychological counseling and support services that exist for students, faculty and staff.

There will be nine Harassment Advisors appointed by the President to staggered two-year terms. The President shall select the Advisors for their integrity, their ability to serve as honest brokers, and their approachability by various campus populations.

Each spring in preparation for the following Fall term, the President will confirm and appoint members as necessary so that there are two principal facilitators and seven other advisors, including at least two advisors from each of the following groups: students, administrators, faculty, and support staff. The two facilitators will be expected to marshal information about sexual harassment and discrimination harassment respectively. The pool of Harassment Advisors will include at least one tenured faculty member. Since the majority of sexual harassment incidents are directed toward women, it is recommended that at least half of the members of the pool be women. There will also be at least one Harassment Advisor from the ALANA community at Colgate. Harassment Advisors will

undergo annual training conducted by the Dean for Institutional Diversity, including a review of Colgate policies and procedures so that they are able to provide accurate information to members of the community. All Harassment Advisors are required to attend this annual training.

### **Functions of the Harassment Advisors**

**a. Listening and Providing Information** Any member of the Colgate community may talk with any Harassment Advisor about harassment or discrimination. The purpose of these meetings is to provide an objective, non-threatening environment in which the individual can voice the complaint and articulate the effects of the offensive behavior. Complainants may, if they wish, have a friend or advisor accompany them when they discuss a problem with a Harassment Advisor. As stated above, Harassment Advisors will provide the complainant with information about University policies and about available procedures and their possible outcomes.

**b. Informal Mediation** Persons considering proceeding to mediation should ask a Harassment Advisor to suggest a mediator. Appropriate mediators depend on circumstances, but may include the Dean for Institutional Diversity, one of the two Harassment Advisors who also serve as facilitators, the Associate Vice President for Human Resources, or other appropriate University Official. If the complainant so desires, the Harassment Advisor will accompany the person seeking advice to the meeting with a possible mediator and at other steps in the mediation process. In mediation, the mediator will describe the complaint to the person against whom it is lodged and attempt to resolve the complaint informally.

A person seeking mediation will usually need to agree to be identified to the person against whom the complaint is lodged. The mediator should begin mediation efforts promptly and shall report the results of mediation promptly to the complainant. The mediation process will normally be completed within 10 working days of the request for mediation to occur. If the mediator needs to consult third parties, the complainant should be notified in advance and such consultation should make every effort to protect the identity of the principals involved. After completed mediation, the mediator should follow up by contacting the complainant within thirty days and again within six months to determine whether the issues have been resolved.

**c. Education of the Community** Harassment Advisors will try to be educative in response to all of their contacts. In addition, they will advise on and participate in the education of the community as a whole in matters of harassment and discrimination.

**d. Record Keeping and Annual Report** It shall be the duty of the two facilitators to the Harassment Advisors group to prepare an annual report and submit it to the President no later than the middle of September. This report shall have two parts: (1) an outline of the number and nature of contacts, i.e. requests for information, initiations of informal mediation, complaints which have been pursued through a formal grievance procedure; (2) recommendations developed by the Harassment Advisors pertaining to Harassment and Nondiscrimination Policies or any other relevant university policy.

Harassment Advisors will forward to the facilitators a brief log of contacts made during the year. Records kept for this purpose will be kept in a confidential file in the office of the Dean for Institutional Diversity.

**e. Meetings of the Harassment Advisors** The Harassment Advisors shall meet as a group at least once a semester to review Nondiscrimination and Harassment Policies, to discuss the annual report and make recommendations to be included in that report, and to review the educational initiatives of the group. Individual cases will not be discussed at these meetings, and every effort will be made to respect privacy and confidentiality.

#### **4. Procedure for Filing Formal Complaints of Discrimination or Harassment**

At any time, for any level of complaint, a complainant may lodge a formal complaint through the appropriate channels whether or not a Harassment Advisor has first been approached and whether or not mediation has been tried. Harassment Advisors do not handle formal complaints.

Colgate encourages the prompt reporting of any potential violations of its harassment policy, so that it can take appropriate steps to maintain an educational and workplace environment free of harassment, and to ensure that its procedures are effective in promoting this goal. While no fixed reporting period has been established, early reporting and intervention has proven to be the most effective method of resolving actual or perceived incidents of harassment.

The procedure described below is used to resolve all formal complaints of discrimination or harassment involving university employees or students, with the following exceptions: (1) those involving persons employed under a union contract that covers these areas; (2) complaints by students against other students, procedures for which are described in the Student Handbook. This procedure is not a substitute for the appeals procedure concerning decisions in faculty promotion, tenure, or third-year or comprehensive reviews (described in Chapter III, Section C.17); however, filing an appeal under that process does not preclude access to the procedure for formal claims of discrimination and harassment. Similarly, the procedure described below is not a substitute for the review of grade procedure (described in Chapter IV, Section E.2) but going through the grade review process does not preclude access to the procedure for formal claims of discrimination and harassment.

**Dean for Institutional Diversity** Formal complaints of discrimination or harassment should be made to the Dean for Institutional Diversity. Upon receiving a complaint, the Dean will promptly investigate the complaint and make a preliminary determination as to whether or not the available evidence appears to support the complainant's charge; during the academic term, this will normally take place within 20 working days. If the complaint appears to have merit, and resolution attempts are unsuccessful, the Dean will refer the case to the Discrimination and Harassment Hearing Committee, defined below. Where, in the opinion of the Dean, the case lacks merit, the complainant will be so advised, but the complainant may nonetheless request a formal review by the Hearing Committee.

**Discrimination and Harassment Hearing Committee** The Discrimination and Harassment Hearing Committee will consist of six members: three elected members of the Committee on Faculty Affairs, appointed annually; and three members of the clerical

technical, and administrative staff, appointed to three-year terms by the Provost of the University with the advice of the Dean for Institutional Diversity. The Hearing Committee will elect its own Chair.

Hearings will be convened as soon as is practicable and will be conducted in private. Participants will include members of the Committee, the Dean for Institutional Diversity, the complainant and any respondents (or their representatives), as well as called witnesses. The complainant and the respondents shall exchange names of called witnesses two days prior to the hearing. All parties will have ample opportunity to present facts and arguments in full, and may invite other persons to testify, including the Dean for Institutional Diversity. Formal rules of evidence will not apply; any evidence which the Committee believes is relevant may be admitted. The Committee may also exclude irrelevant or immaterial evidence. The Chair will rule on all matters of procedure and admissibility of evidence.

After hearing evidence and arguments, within 10 days the Hearing Committee will forward to the Provost a written statement summarizing the evidence and presenting the Committee's findings and recommendations. In case of a tie vote, the Committee will forward the reasons on both sides of the issue to the Provost. The Dean for Institutional Diversity will also forward his or her opinion. Where issues of competency or performance are concerned, the Committee will not substitute its judgment of competency or performance for the judgment of appropriate officials; the function of the Hearing Committee is to determine whether those policies, processes, and criteria used in arriving at judgments of competency or performance were consistent with the University's policies regarding harassment and nondiscrimination.

**Role of the Provost** Within a prompt and reasonable time frame, normally no more than 30 days after receiving the report of the Hearing Committee, the Provost will formally notify the Committee, the Dean for Institutional Diversity, the parties to the grievance, and appropriate administrative and supervisory officers of his or her conclusions and specify what actions, if any, shall be taken. If his or her decision departs from the recommendations of the Hearing Committee, the Provost will provide a written explanation to the Dean, the complainant, and the chair of the Committee. The final decision of the Provost is binding and shall not be subject to review under any other grievance procedure in force in the University.