

## University Personnel Non-Discrimination and Anti-Harassment Policy

### **I. Statement of Institutional Values**

Colgate values the social and intellectual vibrancy that occurs when students, faculty, and staff with different life experiences, viewpoints, and belief systems come together to share knowledge and foster understanding. We aim to create and maintain a Colgate community whose members can study, live, and work together in an environment characterized by equal opportunity, inclusiveness, safety, and mutual respect. To that end, this policy prohibits discrimination, harassment (including sexual harassment), sexual assault, sexual exploitation, domestic violence, dating violence, stalking, and related retaliation (collectively “Prohibited Conduct”). Colgate is committed to maintaining an educational environment and workplace free from Prohibited Conduct. Any and all such acts are serious violations of our community values. They impede our educational mission. (See Colgate’s Mission Statement [here](#), and the discussion of community values in Colgate’s Statement on Academic Freedom and Freedom of Expression, [here](#).)

Colgate fully adheres to all federal and state civil rights laws banning discrimination in the context of its programs and activities. These include but are not limited to Title IX and Title VI of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Rehabilitation Act, the New York State Human Rights Law, and New York State Education Law Article 129-B. Colgate is committed not only to compliance with these laws but with promoting a community that lives out the values these equal opportunity laws envision.

This policy addresses Prohibited Conduct by individual members of the campus community. However, the university also accepts complaints about discrimination or discriminatory impact caused by a policy, procedure or practice of the university, or a specific university department, office or operating unit. A complaint about a policy, procedure or practice should be made to the Office of Equity and Diversity, who will conduct an inquiry into the policy, procedure or practice, and, if a discriminatory impact is found, will issue recommendations for corrective and remedial action to the appropriate university personnel.

This policy also complies with New York State law that mandates that employers maintain a policy prohibiting workplace sexual harassment.

### **II. Policy Coverage**

This policy sets forth behavioral expectations for all Colgate University personnel. This policy also applies to individuals who are not University employees, but are employees of contractors, subcontractors, vendors, consultants, other affiliated individuals, and other persons who provide services in the University’s workplace, such as interns (paid or unpaid) and temporary employees. This policy also applies to volunteers.

This policy applies to conduct that occurs on Colgate’s campus or property and to all Colgate programs and sponsored activities. This policy also applies when an employee is off-campus performing duties for Colgate. For example, this policy applies when an employee is performing

work for Colgate at an off-site location (including remote work or distance instruction), traveling on Colgate business, or attending a professional conference.

Conduct that occurs off-campus and at a time when the employee is not performing duties for Colgate may violate certain aspects of this policy if the conduct creates a threatening or hostile environment on campus or within a Colgate program, or if the incident causes concern for the safety or security of Colgate’s campus or if the conduct interferes with Colgate’s ability to carry out its mission. The University will not apply this Policy to solely private activities that have no nexus to or impact on the Colgate community.

Colgate non-discrimination and anti-harassment policy documents apply as follows:

| Parties and Nature of the Complaint:  | Applicable Policy:   | Applicable Process:  |
|---|--|--|
| In any case where a <i>student</i> (or student organization) is the <i>complainant or the respondent</i> , and the allegation is sex discrimination, sexual harassment, sexual misconduct, dating violence, domestic violence, stalking or related acts of retaliation  | Student Non-Discrimination, Anti-Harassment and Sexual Misconduct Policy | Student Sex- or Gender-Based Discrimination and Harassment and Sexual Misconduct Resources and Response Procedures |
| In any case where a <i>student</i> (or student organization) is the <i>respondent</i> , and the allegation is any other form of harassment or discrimination prohibited by law or related acts of retaliation   | Student Non-Discrimination, Anti-Harassment and Sexual Misconduct Policy | Student Discrimination and Harassment Resources and Response Procedures  |
| In any case where the <i>respondent</i> is a <i>faculty or staff member</i> ( <u>regardless</u> of the student, faculty, or staff status of the reporting party) where the University determines that Title IX requires the application of the procedures set forth in the Student Sex-or Gender-Based Discrimination and Harassment and Sexual Misconduct Policy and Resources and Response Procedures | University Personnel Non-Discrimination and Anti-Harassment Policy       | Student Sex- or Gender-Based Discrimination and Harassment and Sexual Misconduct Resources and Response Procedures |

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| <p>In all <i>other</i> cases (i.e., other than situations covered above) where a classroom <i>faculty</i> member is the <i>respondent</i></p>                            | <p>University Personnel Non-Discrimination and Anti-Harassment Policy</p> | <p>University Personnel Non-Discrimination and Anti-Harassment Response Procedures (Faculty), including Faculty Handbook provisions</p> |
| <p>In all <i>other</i> cases (i.e., other than situations covered above) where a <i>staff</i> member or <i>non-classroom faculty</i> member is the <i>respondent</i></p> | <p>University Personnel Non-Discrimination and Anti-Harassment Policy</p> | <p>University Personnel Non-Discrimination and Anti-Harassment Response Procedure (Staff)</p>   |

In the event a particular situation may be covered by one or more policies, the Discrimination and Harassment Team (DHT) has the authority to determine the policy that will be applied. This team shall include: Executive Director for Equity and Inclusion and Equal Employment Opportunity and Affirmative Action Tamala Flack [tflack@colgate.edu], Associate Provost for Equity and Diversity and Title IX Coordinator Marilyn (“Lyn”) Rugg [mrugg@colgate.edu], Associate Provost for Equity and Diversity Maura Tumulty [mtumulty@colgate.edu], and the Cabinet member who oversees human resources (Senior Advisor to the President Christopher Wells [cwells@colgate.edu] as of 7/1/2020). However, Associate Provost for Equity and Diversity and Title IX Coordinator, Marilyn (“Lyn”) Rugg [mrugg@colgate.edu] has the authority to determine the policy that will be applied in any case involving or potentially involving Title IX.

A complaint against employees of contractors, subcontractors, vendors, consultants, other affiliated individuals, and other persons who provide services in the University’s workplace, such as interns (paid or unpaid), temporary employees and volunteers will be handled as deemed prudent by the DHT. If the university concludes that a nonemployee has subjected an individual to conduct in violation of this policy, prompt and effective action will be taken to stop the behavior and deter any future prohibited conduct.

### III. Definitions of Prohibited Conduct

Discrimination. Colgate University complies with all federal and state civil rights laws banning discrimination in private institutions of higher education. Colgate will not discriminate against, and prohibits discrimination against, any person because of race, color, sex, gender, sexual orientation, gender identity or expression, pregnancy, religion, creed, national origin (including ancestry), citizenship status, physical or mental disability, age, marital status, veteran or military status (including special disabled veteran, Vietnam-era veteran, or recently separated veteran), predisposing genetic characteristics, domestic violence victim status, or any other protected category under applicable local, state, or federal law (collectively, “Protected Characteristics”).

The term “discrimination” refers to an act that disadvantages a person *and* that occurs because of the affected individual’s Protected Characteristics. Examples of discrimination include but are not limited to denying an individual a raise or promotional opportunity because of their Protected Characteristic(s), or giving a student a lower grade than deserved, because of the student’s Protected Characteristic.

Harassment (other than Sexual harassment). Harassment is unwelcome, offensive conduct that occurs on the basis of race, color, pregnancy, religion, creed, national origin (including ancestry), citizenship status, physical or mental disability, age, marital status, veteran or military status (including special disabled veteran, Vietnam-era veteran, or recently separated veteran), predisposing genetic characteristics, or domestic violence victim status.

Sexual harassment. Sexual harassment means unwelcome, offensive conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex, gender, sexual orientation, or gender identity or expression.

A determination as to whether harassment occurred depends on the totality of the circumstances, including the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness or severity of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual or group and the learning community.

A “hostile environment” is created when the offensive behavior interferes with an individual’s ability to participate in the University’s programs (i.e., to work and to learn) when judged against a reasonable person standard. However, Colgate encourages individuals experiencing or witnessing offensive behavior to make a report as early as possible so as to have the situation corrected before it reaches the level of a hostile environment. Individuals with a concern need not worry about whether the behavior is sufficiently serious to constitute a hostile environment. The University reserves the right to remedy harassment pursuant to this policy even if the behavior in question does not rise to the level of legally recognized or actionable harassment.

New York law provides that workplace harassment on the basis of a Protected Characteristic is unlawful to the extent that it subjects a person to inferior terms, conditions or privileges of employment and rises above the level of petty slights or trivial inconveniences. However, as a community committed to inclusivity and collegiality, the university will respond to situations that do not rise to a legal violation through supportive, protective, and/or educative measures, as well as minor sanctions, as appropriate.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation of this policy. The determination as to whether this policy has been violated takes into account the totality of the circumstances as described above. In all instances, a key factor is whether the complained-of behavior is based on sex, gender, race, religion, national origin or any of the Protected Characteristics listed above. If not, the behavior is not a violation of this Policy. However, even if the conduct does not constitute Prohibited Conduct under this Policy, the university may respond by providing individual and community support and resources to those who have been impacted; if appropriate, education or mentoring to those whose behavior generated the concern; and/or facilitating dialogue between the parties to ensure a future productive working relationship.

Colgate also prohibits “quid pro quo” sexual harassment, which means “this for that” harassment. It is a violation of this policy for any person to condition any benefit on submission to sexual activity.

Harassment (sexual harassment or other forms of harassment) can occur in various forms. As noted above, the determination as to whether a particular incident or situation rises to the level of a violation of this Policy depends on the totality of the circumstances, and the following are provided as potential examples only:

- Verbal, such as sexually graphic comments; racial or religious slurs; refusing to use a person’s preferred pronouns or name; or jokes or comments that demean a person on the basis of sex, gender, sexual orientation, gender identity or gender expression or any other of the above-referenced Protected Characteristics.
- Physical, such as unwanted sexual or physical contact, including kissing and hugging; intimidation through physical threats; or pranks that demean or communicate hostility on the basis of a Protected Characteristic.
- Visual, such as pornographic images; or symbols with racially offensive meaning.
- Electronic, such as social media posts or communications via text or other messaging platforms that are offensive based on the above-referenced Protected Characteristics. Caution is urged when using social media as content posted and intended to be private may or may not be or remain private.
- Sex stereotyping – which refers to situations where a person is harassed or treated less favorably because their conduct or personality traits do not conform to other people’s ideas or perceptions about how individuals of a particular sex should act or look.

Sexual Assault. “Sexual assault” includes any sexual act directed against another person without the consent of the other person, including instances where the victim is incapable of giving affirmative consent. Sexual assault consists of the following specific acts:

- Non-Consensual Sexual Intercourse. Sexual assault of this type includes the 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 the affirmative consent of the other person or where the other person is incapable of consent due to mental or physical incapacity. This type of sexual assault also includes non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.
- Non-Consensual Sexual Contact. This form of sexual assault includes any intentional touching, however slight, for purposes of sexual gratification or with sexual intent, of the private body parts (including genitalia, anus, groin, breast, inner thigh, or buttocks) of another person without the affirmative consent of the other person, including instances where the other person is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity. This may include non-penetrative acts, touching directly or with an object, and/or touching the private body parts of another over clothing. This may also include forcing or causing another without affirmative consent to touch one’s own private body parts.

Sexual Exploitation. Taking non-consensual or abusive sexual advantage of another for one’s own benefit or for the benefit of anyone other than the person being exploited, if the conduct does not otherwise constitute another offense under this policy. Examples of Sexual Exploitation include (a) sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed); (b) taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the 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 the photographed person’s consent or beyond the parameters of consent), including the making or posting of revenge pornography; (c) exposing one’s genitals in non-consensual circumstances or non-consensual disrobing of another person so as to expose the other person’s private body parts; (d) prostituting another person; (e) engaging in sexual activity with another person while knowingly infected with a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the STD or STI; (f) causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity; (g) misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections; (h) forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image

that depicts the person's nudity or sexual activity; (i) knowingly soliciting a minor for sexual activity.

Dating Violence. Dating violence refers to violence (including but not limited to sexual or physical abuse or the threat of such abuse) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence can include behavior such as coercion, isolation or other forms of emotional, verbal or economic abuse if it reflects a threat of sexual or physical abuse as described above. Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence. Domestic violence refers to violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the university is located, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the act of violence occurs. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship as described above.

Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. For the purposes of this definition, (i) a "course of conduct" means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; (ii) "reasonable person" means a reasonable person under similar circumstances and with similar identities to the complainant; and (iii) "substantial emotional distress" means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling. Stalking behavior may include but is not limited to repeated, intentional following, observing or lying in wait for another; using "spyware" or other electronic means to gain impermissible access to a person's private information; repeated, unwanted, intrusive, and frightening communications by phone, mail, email, text, etc.; making direct or indirect threats to harm an individual or the individual's relatives, friends, or pets; or damaging or threatening to damage the property of the targeted individual.

Prohibited Consensual Relationships. Colgate University employees (including both faculty and staff) need to be especially sensitive to the power/authority relation in their interactions with students. Consensual romantic, sexual or dating relationships between University employees and students contradict both professional ethics and this policy and are

prohibited by Colgate. Consensual relationships that begin prior to the date on which the involved parties become student and employee are not prohibited by this policy, but the employee is required to report the existing relationship to their supervisor as of the date the parties are simultaneously enrolled and employed by the university. In such circumstances the university reserves the right to take such actions as may be necessary to address any resulting conflict of interest (for example, ensuring that the employee does not have responsibility for evaluating work submitted by the student for academic credit).

Retaliation. Retaliation is an adverse act perpetrated to “get back” at a person because the person reported misconduct, filed a complaint, or participated or refused to participate as a complainant, respondent or witness in an investigation or proceeding conducted in response to reported violation of this policy by the university or by an external agency. Retaliation also includes an adverse act against someone for the purpose of interfering with any right or privilege under this policy or applicable law. Retaliation can take many forms, including, but not limited to, adverse action or violence, threats and/or intimidation that would discourage a reasonable person (under similar circumstances and with similar identities to the targeted individual or group) from engaging in protected activity. A person who acts in good faith is protected from retaliation. The fact that a statement is not determined to be proven or established following investigation and adjudication does not mean that the statement lacked good faith; a person may provide inaccurate information believing it is accurate, which is still good faith. If a person makes a statement knowing that it is false, the person has acted without good faith.

Hate Crimes. For the purpose of this policy, a “hate crime” is defined as violence to a person or damage to property (or a threat to commit either of these) or any other criminal act that is motivated entirely or partly by hostility toward or intolerance of another’s Protected Characteristics.

#### **IV. Policy Enforcement**

##### **A. Internal Oversight.**

The DHT oversees implementation of the applicable processes for responding to complaints of Prohibited Conduct. Inquiries may be made to any of the following members of this team:

Tamala Flack  
Executive Director for Equity and Inclusion, Equal Opportunity and Affirmative Action  
The Office of Equity and Diversity  
102 Lathrop Hall  
Colgate University  
13 Oak Drive  
Hamilton, NY 13346  
315-228-7014



Marilyn (“Lyn”) Rugg, Ph.D.  
Associate Provost for Equity and Diversity & Title IX Coordinator  
The Office of Equity and Diversity  
102 Lathrop Hall  
Colgate University  
13 Oak Drive  
Hamilton, NY 13346  
315-228-6161

Maura Tumulty  
Associate Provost for Equity and Diversity  
The Office of Equity and Diversity  
102 Lathrop Hall  
Colgate University  
13 Oak Drive  
Hamilton, NY 13346  
315-228-6461

Christopher Wells  
The Office of the President  
Colgate University  
13 Oak Drive  
Hamilton, NY 13346  
315-228-6833

#### B. External Agencies and Remedies.

Harassment based on a Protected Characteristic, including sexual harassment, is not only prohibited by the University; it is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process described herein, individuals may also choose to pursue legal remedies with the following governmental entities at any time.

The New York State Division of Human Rights (DHR) enforces the Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., which applies to employers in New York State and protects employees, paid or unpaid interns and non-employees providing services in the workplace pursuant to a contract, regardless of immigration status. A complaint alleging a violation of the HRL may be filed either with DHR, subject to a one-year statute of limitations (three years in cases of sexual harassment), or in New York State Supreme Court, subject to a three-year statute of limitations. The DHR will investigate the complaint to determine if unlawful harassment occurred. If unlawful harassment is found after a hearing, the DHR or the court may award relief, which may include requiring your employer to take action to stop the harassment, and redress the damage caused by paying monetary damages, attorney’s fees and civil fines. DHR’s main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400 [www.dhr.ny.gov](http://www.dhr.ny.gov). The DHR can be contacted at (888) 392-3644. More information about filing a complaint is available at [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint). The website provides a complaint form and contact information for DHR’s regional offices across New York State.

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An employee must file a charge with the EEOC within 300 days from the conduct giving rise to the complaint. The EEOC also investigates complaints but does not hold hearings or award relief. The EEOC may take other action including pursuing cases in federal court on behalf of complaining parties or issuing a Right to Sue Letter that allows an individual to pursue his/her claims in federal court. Federal courts may award remedies if discrimination is found to have occurred. The EEOC can be contacted at 1-800-669-4000 (1-800-669-6820 (TTY)), via email at [info@eoc.gov](mailto:info@eoc.gov), or by visiting their website at [www.eoc.gov](http://www.eoc.gov). If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

## **V. Disability Accommodations**

Colgate University is committed to full compliance with the Americans with Disabilities Act (ADA) and its amendments, Section 504 of the Rehabilitation Act of 1973, and the New York State Human Rights Law, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities.

This policy covers claims of disability-related harassment and discrimination. Disability accommodation requests are handled separately from this policy and may not be grieved or challenged pursuant to this policy. Executive Director for Equity, Inclusion and EEO/AA Tamala Flack [[tflack@colgate.edu](mailto:tflack@colgate.edu)] is designated as the University's ADA Coordinator and is responsible for coordinating efforts to comply with these disability laws, including evaluation of accommodation requests. Individuals with a discrimination and/or harassment complaint based on disability status should raise concerns through any member of the Discrimination and Harassment Team (DHT). When reporting a concern to the DHT an individual need not worry about whether it is better to raise a concern first with another individual (e.g. within the organizational chain, through the DHT, or through another designated individual); the university is committed to a collaborative, flexible response to ensure that situations are addressed at the most appropriate level and in the most appropriate way.

## **VI. Coordination with Other Policies and Procedures**

A particular situation may potentially implicate one or more university policies or processes. The university reserves the right to determine the most applicable policy or process and to utilize that policy or process. Without limiting the foregoing, if determined appropriate by DHT, the processes described in this policy may be used to respond to, investigate and adjudicate conduct allegedly violating other policies if the alleged conduct is related to or arises out of the same facts, circumstances or incidents as alleged Prohibited Conduct to be addressed pursuant to this policy.

## **VII. Delegation of Authority**

Any person assigned a role pursuant to the University Personnel Non-Discrimination and Anti-Harassment Policy or accompanying procedures may delegate their authority, or the DHT may require reassignment of such authority, to another appropriate person to avoid bias or conflicts of

interest, or in other circumstances, as deemed necessary. The university may also utilize appropriately trained internal or external personnel for any role under this policy as it may deem necessary or appropriate. In addition, to the extent permitted by applicable law, appropriately trained personnel other than the DHT may oversee cases for reasons including, but not limited to, the need to facilitate efficient and timely administration of such cases.

## **XXII. Discretionary Authority; Change in Applicable Law**

The DHT shall have discretionary authority to construe and interpret this policy and accompanying procedures, and to determine the meaning of any disputed or uncertain provisions. In any matter that does or may implicate Title IX, the Associate Provost for Equity and Diversity and Title IX Coordinator has such authority. The university may make modifications to this policy or any process upon determining that changes to law or regulation, or interpretations thereof, require policy or procedural alterations not reflected in this policy, or for any other legitimate business reason.