

Title IX and EGP obligations

May 5, 2016

Title IX prohibits discrimination based on sex in education programs and activities in federally funded schools at all levels. Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. All students are protected by Title IX—regardless of their sex, sexual orientation, gender identity, part- or full-time status, disability, race, or national origin—in all aspects of the university’s educational programs and activities.

For the purposes of this meeting, the focus is on **Title IX’s application to incidents of sexual harassment, sexual assault** (including interpersonal violence/dating or relationship violence and stalking), and on **bias harassment/discrimination concerns**.

Our **EGP policy** clearly defines the various categories of sexual harassment and sex offenses, including **non-consensual sexual intercourse, non-consensual sexual touching, and sexual exploitation** (observing someone engaged in sexual or private activity, taking pictures/video, exposing oneself to another—all nonconsensual/ without consent or exceeding boundaries of consent).

Dating/relationship/interpersonal/domestic violence includes physical violence (hitting, punching, kicking, etc), coercion, threats, intimidation, isolation or other forms of emotional, sexual, verbal abuse used as a form of control of a current or former intimate partner.

Stalking is conduct that would cause an individual to fear for their safety or to suffer substantial emotional distress. It includes physically following/lying in wait, but also can occur via electronic means and social media, phone, text, mail and email contact, and threats to harm the individual or others or to damage property.

Consent is a critical piece of Title IX legislation and our EGP policy:

- **Affirmative** consent is a **knowing, voluntary, and mutual** decision among all participants to engage in sexual activity.
- Consent can be given by words or actions, as long as those words or actions create **clear permission** regarding willingness to engage in the sexual activity.
- **Silence or lack of resistance, in and of itself, does not demonstrate consent.**
- The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.
- A person cannot consent if they are unable to understand what is happening, asleep, unconscious, or incapacitated. **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).
- 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.
- 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.

If a student experiences sexual harassment or any form of sexual violence, **you as the director of the study group are the responsible employee** who must:

1. **Support:** Provide support and assistance to the student in crisis. Do not ask questions about details of the incident, your role is to provide support, not to investigate. Ensure that the student is safe and has access to medical treatment as needed.
2. **Provide Rights:** Ensure that the student(s) understands their rights and options for reporting the incident to local authorities and to us here on campus. Share with them the EGP policy/process online, as well as the resources information.
3. **Report:** Report the incident to me in timely fashion. You **MUST** provide me with all the information that you have. You must report all Clery incidents (including sexual assault) to Campus Safety, and Campus Safety can forward the information to me. However, I would very much like you to follow up with me as well so that I can support you in addressing the concerns of the student(s) and to ensure that all interim remedies have been offered to the student(s).
4. **Provide Interim Remedies:** Offer administrative and academic support, including classroom accommodations and academic extensions, changes in housing as appropriate, access to ongoing counseling services, and any other measures that will help the student to feel safe and supported.
5. **Follow up:** Check in with the student(s) and make sure that they are getting the support they need (counseling, legal/criminal, DOC, Title IX). Reassure and support them, especially when they are hesitant to file a complaint either with local authorities or with Campus Safety.

Recognize the common barriers to reporting:

- a. Self-blame (not understanding consent), embarrassment
- b. Fear of getting into trouble for underage drinking or drug use (not understanding amnesty)
- c. Fear of getting someone else in trouble and wanting to protect them, relationship closeness (often the “he’s really a nice guy, he was just drunk” perspective)
- d. Fear of retaliation, ostracism (everyone will find out, it will ruin my social life, it will wreck the camaraderie of the study group, etc.)
- e. Don’t know how to report (help them to understand and work with them)
- f. Don’t believe that anything will happen as a result of reporting (reassure them that we will do everything we can to support them—interim remedies as well as complaint process)
- g. Belief that they will “get over it” and move on without lingering effects (unfortunately, not the case)

Bias:

EGP policy also covers complaints of bias, discrimination, discriminatory harassment, and hate crimes. Bill will talk about hate crimes in relation to Clery reporting, but it is important that you recognize and respond to incidents of discriminatory harassment particularly when they affect students abroad because they don’t have their normal support groups and can feel especially isolated and unsupported.

- Be aware of group dynamics and take an active role in making sure that everyone is being included in group activities both official and informal. Engage in social engineering when necessary to make sure that everyone is part of the group.
- Be especially sensitive to any students whose identity puts them in a vulnerable position in the culture of the host country. Also be sensitive to the experiences of students who are traditionally marginalized in the Colgate community (based on race, sexual orientation, gender identity and expression, socioeconomic status or religion).
- Don’t avoid the difficult conversations. Model engagement and dialogue.

Study Group Director / First Responder
for cases of sexual assault, stalking, dating violence

At first report, the reporting individual must be told, “You have the right to make a report to Campus Safety, local law enforcement, and/or state police or choose not to report; to report the incident to Colgate administrators; to be protected by Colgate from retaliation for reporting an incident; and to receive assistance and resources from Colgate.” This required language should be modified to fit the study group locale with respect to reporting to local law enforcement.

First responder responsibilities: Take the student’s concern seriously and provide support.

1. Explain that you are not a confidential resource, and that you will share the information you have with the Title IX Coordinator (and be sure to report to the Title IX Coordinator within 24 hrs).
 - a. Information may be shared privately with others within the University on a need-to-know basis. The decision about what action(s) to take depend on many factors, including the complainant’s wishes, particularly in cases of sexual misconduct. A complainant may make a report and request that the University take no investigatory or disciplinary action. The University endeavors to comply with complainant’s wishes with respect to whether responsive action is taken. However, that is not always possible.
 - b. Provide information regarding the confidential resources available, and assist the reporting individual in reaching a confidential resources, if desired
 - a. On-campus: Counseling, Chaplains
 - b. Off-campus: Local rape/sexual violence resource center—this information is site specific
2. Provide information regarding rights and options to proceed:
 - a. “Resources for Those Reporting Sexual Assault, Stalking, or Dating Violence” document
 - b. EGP [policy](http://www.colgate.edu/egppolicy) (www.colgate.edu/egppolicy)
 - c. [Sexual Violence Support, Resources and Education](http://www.colgate.edu/sexualassault) website (www.colgate.edu/sexualassault)
3. In cases of immediate sexual assault, emphasize the importance of preserving evidence and obtaining a medical examination or sexual assault forensic examination as soon as possible
 - a. Provide support and transportation to the hospital for a rape kit if that is the choice of the reporting individual. This is site specific—use your discretion.
 - b. Review “[What to do](http://www.colgate.edu/sexualassault)” (www.colgate.edu/sexualassault) information with the individual
4. Explain that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the law should be addressed to local law enforcement. This is site specific—use your discretion.
5. Explain that if the reporting individual chooses to file a university complaint, it will be investigated in accordance with our EGP policy and process (www.colgate.edu/egpprocess).
6. Explain that the reporting individual may withdraw a complaint or involvement from the EGP process at any time.

Determining a Response to a Request for Confidentiality

Even Colgate offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

When an individual comes forward and shares information regarding any form of sexual violence (sexual misconduct, sexual exploitation, dating violence, or stalking) but wishes confidentiality or does not consent to an investigation, the Title IX Coordinator must weigh the request against the university's obligation to provide a safe environment for all.

If the reporting party declines consent to an investigation, that wish shall be honored unless the university determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm. Factors used in determining whether to honor request include:

- a. Whether the accused has a history of violent behavior or is a repeat offender;
- b. Whether the incident represents an escalation of conduct from previously noted behavior;
- c. Whether there is an increased risk of additional acts of violence;
- d. Whether the accused used a weapon or force;
- e. Whether the reporting individual is a minor;
- f. Whether Colgate possesses other means to obtain evidence such as eyewitnesses or security footage; and
- g. Whether the available information reveals a pattern of perpetration at a given location or by a particular group.

If the Title IX Coordinator determines that an investigation is required, the reporting party will be notified and the university will take immediate steps to protect and assist them.

Colgate will provide interim remedies regardless of reporting choices.

Colgate will not initiate an investigation based on information obtained through public awareness events such as Take Back the Night or Speak Out, but we can provide education/prevention efforts. We may take proactive steps to combat domestic violence, dating violence, stalking, and sexual assault in a general way that does not identify those who disclose or the information disclosed.

Resources for Those Reporting Sexual Assault, Stalking, Dating or Domestic Violence

You have the right to make a report to Campus Safety, local law enforcement, and/or state police or choose not to report; to report the incident to Colgate; to be protected by Colgate from retaliation for reporting an incident; and to receive assistance and resources from Colgate. Your Study Group director will support you in making a report, if you so desire.

Private On-Campus Support Resources:

The individuals listed below have received trauma-informed training to assist students who have experienced any form of sexual violence with care and compassion. Even Colgate offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. Reports of sexual assault will be shared only with individuals on a need-to-know basis or as required by law.

- **Campus Safety:** 315-228-7911, 88 Hamilton Street. Campus Safety officers are on duty 24/7 and are trained in assisting victims of sexual violence. They can also put you in touch with the on-call dean or counselor, and can assist you with making a report to the local or state police.
- **Administrative Deans:** 315-228-7368, 116 Gregory Hall. The **on-call dean**, available after hours by calling Campus Safety (315-228-7911), can contact medical/counseling personnel, and help with interim remedies to help you to feel safe and supported.
- **Title IX Coordinator:** 315-228-7288, 102 Lathrop Hall. Marilyn Rugg (mrugg@colgate.edu) is available to receive complaints of sexual harassment and sexual misconduct, and to discuss the options available to you.
- **Equity Grievance Panel (EGP) Members:** EGP members are faculty and staff trained in all aspects of the grievance process and are a source of advice, support and referral to help you know your options. Find the EGP member list here: www.colgate.edu/egpmembers.

Confidential On-Campus Resources:

- **Counseling and Psychological Services:** 315-228-7385 or come to walk-in hours (M-F 1:30-4:30 p.m. After hours, call Campus Safety at 315-228-7333 and ask to talk with the **counselor on-call**. You do *not* need to provide any additional information to Campus Safety.
- **University Chaplains:** 315-228-7682, garden level of the Colgate Chapel.
- **Student Health Services:** 315-228-7750, 150 Broad Street. After hours and for emergencies, contact Campus Safety at 315-228-7911.

Off-Campus Resources:

These resources are specific to your host country, and your study group director can assist you in gaining access to medical, counseling and legal resources.

You choose how you wish to proceed. You may: 1) Do nothing until you are ready; 2) Pursue resolution by the university; and/or 3) Initiate legal proceedings in your host country. If you wish to have an incident investigated and resolved by Colgate, you should contact the Title IX Coordinator and

equity grievance panel member, or Campus Safety, who can take your report and explain the process for you.

Statement of Rights

Students who experience sexual assault of any other form of gender violence have the right:

- To be treated with respect by university officials.
- To experience a safe living, educational, and work environment.
- To have disclosures of harassment, discrimination, domestic violence, dating violence, stalking, and sexual assault treated seriously.
- To file a complaint against any Colgate student, faculty member, administrator, staff member or visitor pursuant to university policy.
- To make a report to local law enforcement and/or state police, and to receive assistance from university officials in initiating legal proceedings.
- To make a decision about whether or not to disclose a crime or violation and participate in the equity grievance process and/or criminal justice process free from pressure by the institution.
- To describe the incident(s) to as few university representatives as practicable and not be required to unnecessarily repeat a description of the incident(s).
- To take advantage of campus support resources (such as Counseling & Psychological Services, the Office of the Chaplains, and University Health Services), and to receive courteous, fair and respectful treatment.
- To be accompanied by an adviser of choice who may assist and advise the reporting individual throughout the EGP process including during all meetings and hearings related to such process.
- To participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To withdraw a complaint or involvement from the institution process at any time.
- To receive amnesty for minor student misconduct (such as minor alcohol violations) that is ancillary to the incident.
- To be free from any suggestion that the reporting individual is at fault when these alleged violations are committed, or should have acted in a different manner to avoid such alleged violations.
- To be protected from retaliation by the university, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution.
- To attend in person or via speakerphone or videoconference any hearing in which the reporting individual is bringing the charge and to be shielded, to the extent practicable, from the responding individual during the hearing if so desired.
- To receive written notification of the outcome/resolution of the complaint.
- To have access to at least one level of appeal of a determination.
- To exercise civil rights and practice of religion without interference by the investigative, criminal justice, or EGP process of the university.
- To have complaints heard in substantial accordance with these procedures.

Student Reporting Options

Campus Safety, 88 Hamilton Street, 315-228-7911. Campus Safety officers are trained in assisting victims to report incidents of sexual violence. Val Brogan, Campus Safety Investigator, is an important source of advice on what your reporting options are, and can provide sensitive intake of complaints.

Online Anonymous Report, www.colgate.edu/concern. If you are not sure what you want to do, you can still inform university officials through the online report form. ***You may submit this report anonymously.*** Please note that although Colgate endeavors to investigate all reports, including anonymous reports, the nature of anonymous reports makes investigation more difficult.

Title IX Coordinator, 102 Lathrop Hall, 315-228-7288. Professor Marilyn Rugg (mrugg@colgate.edu) will discuss the options available to you, and help you to file a complaint if you decide that you wish to do so.

Equity Grievance Panel (EGP) Members, www.colgate.edu/egpmembers. EGP members can serve as a source of advice, support, and referral to help you know your options and to assist you through whatever process you choose.

More information available: www.colgate.edu/sexualassault and www.colgate.edu/egppolicy.

Rights and Resources for The Responding Party in Cases of Sexual Assault, Stalking, Dating or Domestic Violence

Rights

A responding individual in an Equity Grievance investigation and adjudication process has the right to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in the Equity Grievance Process and the rights of the responding individual, including the right to a presumption of “not responsible” until a finding of responsibility is made. The responding individual has the right:

- To be treated with respect by university officials.
- To experience a safe living, educational, and work environment.
- To take advantage of campus support resources (such as Counseling & Psychological Services, the Office of the Chaplains, and University Health Services for students, or Employee Assistance Program services for employees), and to receive courteous, fair and respectful treatment.
- To receive written notice of an investigation describing the date, time, location and factual allegations concerning the violation, specific violations alleged to have been violated, and possible sanctions.
- To be accompanied by an adviser of choice who may assist and advise the responding individual throughout the Equity Grievance Process including during all meetings and hearings related to such process.
- To participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To attend in person or via speakerphone or videoconference any hearing in which the responding individual is charged and to be shielded, to the extent practicable, from the reporting individual during the hearing if so desired.
- To receive written notification of the outcome/resolution of the complaint.
- To have access to at least one level of appeal of a determination.
- To exercise civil rights and practice of religion without interference by the investigative, criminal justice, or Equity Grievance Process of the university.
- To have complaints heard in substantial accordance with Colgate’s Equity Grievance Process.

Resources for The Responding Party in Cases of Sexual Assault, Stalking, Dating or Domestic Violence

Private On-Campus Support Resources:

- **Administrative Deans:** 315-228-7368, 116 Gregory Hall. An **on-call dean** can be reached after hours by calling Campus Safety (315-228-7911). The dean can put you in touch with appropriate counseling and support personnel, and help with matters such as managing academic obligations.
- **Title IX Coordinator:** 315-228-7288, 102 Lathrop Hall. Marilyn Rugg (mrugg@colgate.edu) is available to explain the EGP process, answer questions and discuss the options available to you.
- **Equity Grievance Panel (EGP) Members:** EGP members are faculty and staff trained in all aspects of the grievance process and are a source of advice, support and referral to help you know your options. Find the EGP member list here: www.colgate.edu/egpmembers.

Confidential On-Campus Resources:

- **Counseling and Psychological Services:** 315-228-7385 or come to walk-in hours (1:30-4:30 p.m. M-F). After hours, call Campus Safety at 315-228-7333 and ask to talk with the **counselor on-call**. You do *not* need to provide any additional information to Campus Safety.
- **University Chaplains:** 315-228-7682, garden level of the Colgate Chapel.

Online Resources:

- **EGP policy:** www.colgate.edu/egppolicy
- **EGP process:** www.colgate.edu/egpprocess
- **EGP members:** www.colgate.edu/egpmembers
- **FAQ for responding parties:** <http://www.colgate.edu/offices-and-services/deanofthecollege/biassexualmisconductresources/faq-for-responding-parties>

Interim Measures for Students in Cases of Sexual Harassment, Sexual Misconduct, Interpersonal Violence, Stalking, Retaliation

Interim accommodations

Consistent with Colgate's EGP policy, and in order to help ensure safety, prevent retaliation and/or avoid an ongoing hostile environment, interim accommodations may be put in place, to include:

- Referral to counseling and/or health services;
- Academic support, including adjustments to academic deadlines or course schedules;
- Changes in housing for one or more involved students;
- Altering work arrangements for one or more involved students;
- Providing transportation and/or campus escorts;
- Other reasonable arrangements upon request.

Both parties have the right to request a review of the need for and terms of any such interim measure and accommodation that directly affects them, and to submit evidence in support of that request.

No Contact Order

When reasonable and appropriate to address the immediate and ongoing effects of sexual harassment, sexual misconduct, sexual exploitation, domestic violence, dating violence, stalking, retaliation, or to prevent further harm to the alleged victim and to prevent further violations, Colgate may issue the responding individual a "no contact order", whereby continued intentional contact with the reporting individual would be a violation of the EGP policy and subject to additional conduct charges.

Under this "no contact order," if the responding individual and the reporting individual observe each other in a public place, it shall be the responsibility of the responding individual to leave the area immediately and without directly contacting the reporting individual. Colgate may establish an appropriate schedule for the responding individual to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the reporting individual.

Both the responding individual and the reporting individual shall, upon request and consistent with Colgate's EGP policy, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of the request.

Order of Protection/Restraining Order

When applicable and upon request by a reporting party, Colgate officials will assist the reporting individual in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order.

The reporting individual and the responding individual have the right:

- To receive a copy of the order of protection or equivalent;
- To have an opportunity to meet or speak with a Colgate representative who can explain the order and answer questions about it, including information from the order about the responding individual's responsibility to stay away from the protected person or persons;
- To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.

If the responding individual violates an order of protection, the protected individual has the right to receive assistance from Campus Safety to call on and assist local law enforcement in effecting an arrest for violating such an order, in accordance with current law enforcement jurisdiction and procedures.

Interim Suspension

In circumstances where the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on campus of the accused individual or the ongoing activity of a student organization whose behavior is in question, the university may, for the interim, suspend a student, employee (with or without pay), or organization pending completion of the EGP investigation and procedures.

Both the responding individual and the reporting individual shall, upon request and consistent with Colgate's EGP policy, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of the request.