

# **Sexual Misconduct Policy and Procedures**

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## Introduction

Intentional physical contact of a sexual nature with the body of another should not occur without the unequivocal consent of that individual. In the event of any indication that the contact or conduct is unwelcome, it should cease or not be attempted. “No” means “no”; “maybe” means “no”; silence means “no”; hesitation means “no”; and a “yes” that is followed by a change of mind also means “no”. If there is any doubt, the answer should be understood to be no, and sexual activity should cease. This policy applies regardless of the sexual orientation of the individuals involved.

Sexual misconduct of any form is a violation of a person's rights, dignity and integrity. An act of sexual misconduct represents a fundamental failure by a community member to recognize and respect the intrinsic worth and dignity of another. Acts of sexual misconduct are harmful and illegal and will not be tolerated at Colby-Sawyer College. Such acts corrupt the integrity of the educational process, are contrary to the mission and values of the Colby-Sawyer College community and are against college policy.

All members of the Colby-Sawyer College community should be free from sexual misconduct in the classroom; the social, recreational and residential environment; and the workplace. The college seeks to foster a climate free from sexual misconduct through a coordinated education and prevention program, the promulgation of clear and effective policies, as well as investigative and grievance procedures that are timely, equitable, and accessible to all. In response to any reported sexual misconduct, the college will take appropriate steps to eliminate the misconduct, prevent its recurrence and address its effects.

In order to foster a climate of respect for oneself and for one another and provide for the safety and security of our community, the college expects all community members to take action to prevent acts of sexual misconduct. Creating a safe campus environment is the responsibility of all members of the college community, both individually and collectively.

In order to encourage reporting of sexual misconduct, the college will actively educate the community, respond to all allegations promptly, will provide interim measures to address safety and emotional well-being, and will act in a manner that recognizes the inherent dignity of the individuals involved.

In order to achieve equitable results, the college will carefully review and/or investigate all reports with an earnest intent to understand the perspective and experiences of each individual involved, and provide for fair and impartial evaluation and resolution.

## Purpose

The purpose of this policy is to provide the Colby-Sawyer College community with a clearly articulated set of behavioral standards, common understandings of definitions and key concepts, and descriptions of prohibited conduct. The policy applies to all community members, including students, faculty, and staff employees, and contracted employees regardless of gender identity or sexual orientation. It is intended to protect and guide any Colby-Sawyer College community member and visitors who have been affected by sexual misconduct, whether as a complainant, a respondent, or a third party.

When used in this policy, a complainant refers to the individual who believes him, herself, their selves to have been the subject of sexual misconduct. A respondent refers to the individual who has been accused of sexual misconduct. A third party refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else. A report refers to any incident or concern regarding sexual misconduct that is reported to the college. A complaint is an allegation of sexual misconduct filed against a faculty or staff member or student that initiates the appropriate process.

In addition to defining the forms of sexual misconduct that violate the standards of our community, this policy will also:

- Identify resources and support for all members of the college community and visitors;
- Identify the Title IX coordinator, deputy coordinators, and their roles;
- Provide information about where a college community member and visitors can obtain support or access resources in a confidential manner;
- Provide information about how an individual can make a report on-campus or off campus; and,
- Provide information about how a report against a college community member will be investigated, evaluated and resolved.

## Scope

As stated above, this policy applies to all members of the Colby-Sawyer College community, including students, employees, and contracted employees regardless of gender identity or sexual orientation. When used in this policy, employee generally refers to staff and faculty members and contracted employees of the college. Vendors, independent contractors, visitors, and others who conduct business with the college or on college property are also expected to comply with this policy.

All college community members are responsible for their actions and behavior, whether the conduct in question occurs on campus or in another location. Members of the Colby-Sawyer College community have a responsibility to adhere to college policies and local, state and federal law.

As a result, this policy applies both to on-campus and off-campus conduct as well as online behavior and social media. In particular, off-campus or online behaviors that have an actual or potential adverse effect on any member of the college community or the college fall under this policy.

Any individual may make a report alleging a violation of this policy. The college will provide resource options and respond promptly and equitably to all allegations of sexual misconduct. The college will engage in a Title IX review throughout which it is committed to maintaining fairness for all parties and to balancing the needs and interests of the individuals involved with the safety of the community as a whole. If information comes forward of allegations of sexual misconduct, the college itself may initiate a complaint.

## Notice of Non-Discrimination

Colby-Sawyer College is committed to being an inclusive and diverse campus community, which celebrates multiple perspectives. Under institutional policy, as well as under state and federal law (including Title IX of the Education Amendments of 1972 and the Age Discrimination Act), Colby-Sawyer College does not discriminate in its hiring or employment practices or its admission practices on the basis of gender, race or ethnicity, color, national origin, religion, age, mental or physical disability, family or marital status, sexual orientation, veteran status, genetic information, or gender identity.

In addition, Colby-Sawyer College seeks to provide an environment free from all forms of sex discrimination, and expects all college community members, visitors, and vendors to uphold this effort. Sexual harassment, sexual assault and sexual violence are forms of sex discrimination.

The college recognizes that harassment related to an individual's sex, sexual orientation, gender identity or gender expression can occur in conjunction with misconduct related to an individual's race, color, ethnicity, national origin, religion, age, or disability. Targeting individuals on the basis of these characteristics is also a violation of the college policy. Under these circumstances, the college will coordinate the investigation and resolution efforts (see Part VII for Procedures for Addressing Complaints) to address harassment related to the targeted individual's sex, sexual orientation, gender identity or gender expression together with the conduct related to the targeted individual's race, color, ethnicity, national origin, religion, age, or disability.

Colby-Sawyer College has designated multiple individuals to coordinate its nondiscrimination compliance efforts. Questions, complaints, or concerns about issues of discrimination or harassment, including complaints of sex discrimination in violation of Title IX may be directed as follows:

### For Students:

- Robin Burroughs Davis, Vice President of Student Development and Dean of Students, Room 105 Ware Student Center. Phone: (603) 526-3752. Lead Title IX Coordinator
- Mary McLaughlin, Director of Residential Education, Room 106 Ware Student Center. Phone: (603) 526-3757. Deputy Title IX Coordinator

### For Faculty:

- Laura Sykes, Academic Vice President and Dean of Faculty. Room 131 Colgate Hall. Phone: (603) 526-3760. Deputy Title IX Coordinator

### For Staff employees or visitors:

- Heather Zahn, Director of Human Resources. Room 230A Colgate Hall. Phone: (603) 526-3584. Deputy Title IX Coordinator

In addition, complaints of discrimination on the basis of sex may be directed to:

Assistant Secretary, United States Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202.

For student complaints alleging “harming behaviors” (which includes harassment and bullying) please visit Colby-Sawyer College Student [Code of Community Responsibility](#).

For Complaints about Employees concerning discrimination or harassment, please visit Colby-Sawyer College Employee Handbook.

\*Faculty at Colby-Sawyer College are bound by the Employee Handbook in addition to the Faculty Handbook. The Employee Handbook can be found on myColby-Sawyer at <https://my.colby-sawyer.edu/myhr/SitePages/Home.aspx>.

## **Part I: Prohibited Conduct and Definitions**

The college prohibits sexual misconduct. Sexual misconduct is a broad term that includes but is not limited to sexual harassment, sexual assault, sexual exploitation, stalking (to include cyber stalking), and dating/domestic violence. The college also prohibits acts of coercion and/or retaliation.

Consistent with the values of an educational and employment environment free from harassment based on sex, the college also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

### **A. Sexual Harassment**

Sexual harassment is any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work or participation in social or extracurricular activities;
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance by creating an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic or social environment. The effect will be evaluated based on the perspective of a reasonable person in the position of a complainant.

A single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to provide a hostile environment, particularly if the harassment is physical.

Sexual harassment is prohibited. In some cases, sexual harassment is obvious and may involve an overt action, a threat or reprisal. In other instances, sexual harassment is subtle and indirect, with a coercive aspect that is unstated. Sexual harassment can take many forms:

- It can occur between equals (e.g., student to student, staff to staff, faculty member to faculty member, visitor/contracted employee to staff) or between persons of unequal power status (e.g. supervisor to subordinate, faculty member to student, coach to student-athlete, student leader to first-year student). Although sexual harassment often occurs in the context of an exploitation of power by the individual with the greater power, a person who appears to have less power in a relationship can also commit sexual harassment (e.g., student harassing faculty member).
- It can be committed by an individual or may be a result of the collective actions of an organization or group.
- It can be committed against an individual, an organization or a group.
- It can be committed by an acquaintance, a stranger, or someone with whom the complainant has a personal, intimate or sexual relationship.
- It can occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- It does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Examples of behavior that might be considered sexual harassment include, but are not limited to:

- Unwanted or inappropriate sexual innuendo, propositions, sexual attention or suggestive comments and gestures; humor and jokes about sex or gender-specific traits; sexual slurs or derogatory language directed at another person's sexuality or gender; insults and threats based on sex or gender; and other oral, written or electronic communications of a sexual nature that an individual communicates is unwanted and unwelcome;
- Written graffiti or the display or distribution of sexually explicit drawings, pictures, or written materials; sexually charged name-calling; sexual rumors or ratings of sexual activity/performance; the circulation, display, or creation of emails or websites of a sexual nature.
- Non-academic display or circulation of written materials or pictures degrading to an individual(s) or gender group (instructors should offer appropriate warning regarding the introduction of explicit and triggering materials used in the classroom);
- Inappropriate or unwelcome physical contact or suggestive body language, such as touching, patting, pinching, hugging, kissing, or brushing against an individual's body;
- Undue and unwanted attention, such as repeated inappropriate flirting, inappropriate or repetitive compliments about clothing or physical attributes, staring, making sexually oriented gestures, or giving gifts of a sexual nature, or looking up a skirt or shorts or down a blouse or top;
- Physical coercion or pressure of an individual to engage in sexual activity or punishment for a refusal to respond or comply with sexual advances;
- Change of academic or employment responsibilities (increase in difficulty or decrease of responsibility) based on sex, gender identity/expression, or sexual orientation;



- Use of a position of power or authority to: (1) threaten or punish, either directly or by implication, for refusing to tolerate harassment, for refusing to submit to sexual activity, or for reporting harassment; or (2) promise rewards in return for sexual favors;
- Sexual assault;
- Abusive, disruptive or harassing behavior, verbal or physical, which endangers another's mental or physical health, including but not limited to threats, acts of violence, or assault based on gender and/or in the context of intimate partner violence;
- Demeaning verbal or other expressive behavior of a sexual or gendered nature in instructional settings; and
- Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping. Harassment for exhibiting what is perceived as a stereotypical characteristic for one's sex, or for failing to conform to stereotypical notions of masculinity and femininity, regardless of actual or perceived sexual orientation or gender identity of the harasser or target.

Because of the potential for abuse of power, harassment, bias, and favoritism, the college considers that a conflict exists when any employee of the college engages in a relationship with a student that goes beyond friendship to the romantic, physical, or sexual. Employees of the college may not engage in an intimate or sexual relationship with a Colby-Sawyer College student.

## **B. Sexual Assault**

Sexual assault is defined as physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. This includes rape, sexual assault, battery and sexual coercion. Sexual violence may involve individuals who are known to one another or have an intimate and/or sexual relationship, or may involve individuals not known to one another. Examples include, but are not limited to:

- Having or attempting to have sexual intercourse with another individual without consent. Sexual intercourse includes vaginal or anal penetration, however slight, with a body part or object, or oral copulation by mouth-to-genital contact.
- Having or attempting to have sexual contact with another individual without consent. Sexual contact includes kissing, touching the intimate parts of another, or causing the other to touch one's intimate parts. Intimate parts may include the breasts, genitals, buttocks, mouth or any other part of the body that is touched in a sexual manner.

New Hampshire RSA 632-A (2016) establishes three categories of sexual assault and related offenses.

1. Aggravated Felonious Sexual Assault (a Class A felony punishable by up to 15 years in prison, includes engaging in "sexual penetration" of another, in pertinent part, under any of the following circumstances:
  - a. through application of physical force, violence or superior physical strength;

- b. when the victim is physically helpless to resist;
  - c. when the victim is less than 13;
  - d. when at the time of the assault the victim indicates by speech or conduct that consent is not freely given to performance of the sexual act;
  - e. when there is a pattern of sexual assault with a victim under the age of 16;
  - f. when the actor coerces the victim to submit by threatened use of physical violence or physical strength, and the victim believes that the actor has the ability to execute these threats;
  - g. when the actor coerces the victim to submit by threatening to retaliate and the victim believes that the actor has the ability to execute these threats;
  - h. when the victim submits under circumstances involving false imprisonment, kidnapping or extortion;
  - i. when the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim; and
  - j. when the actor provides therapy, medical treatment or examination of the victim in the course of a therapeutic relationship under certain circumstances. NH Rev Stat § 632-A:2 (2016)
2. Felonious Sexual Assault (a Class B felony punishable by up to 7 years imprisonment), includes, in part, “sexual contact,” (intentional touching, reasonably construed as being for purposes of sexual arousal or gratification) when the accused:
- a. causes serious personal injury to the victim;
  - b. engages in sexual penetration with a person who is between the ages of 13 and 16, where the age difference four years or more;
  - c. engages in sexual contact with a person under the age of 13; and
  - d. engages in sexual contact with a person when the actor is in a position of authority over the person and uses that authority to coerce the victim. NH Rev Stat § 632-A:3 (2016)
3. Sexual Assault (a Class A misdemeanor punishable by a fine of \$2000 and up to one year imprisonment), includes, in part, “sexual contact” (intentional touching, reasonably construed as being for the purposes of sexual arousal or gratification) with a person 13 years of age or older under the circumstances described regarding aggravated felonious sexual assault, and/or engages in sexual penetration with a person between the ages of 13 and 16 where the age difference between the actor and the other person is three years or less. NH Rev Stat § 632-A:4 (2016)

### C. Sexual Exploitation

Sexual exploitation is an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of one's own or another's sexual gratification, financial gain, personal benefit or advantage or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses. Sexual exploitation may involve individuals who are

known to one another, have an intimate or sexual relationship, and/or may involve individuals not known to one another. Examples include, but are not limited to:

1. Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved, or disrobing of another without permission;
2. Non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
3. Prostituting another individual or aiding in or facilitating the sexual assault of another;
4. Knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge; and
5. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

#### **D. Stalking**

Stalking is defined as a course of conduct\* directed at a specific person involving more than one instance of unwanted attention, harassment, physical or verbal contact, or any other course of conduct directed at an individual that could be reasonably regarded as likely to alarm or place that individual in fear of harm or injury, including physical, emotional, or psychological harm. This includes cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact are used to pursue, harass or make unwelcome contact with another person. Stalking and cyber-stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another.

New Hampshire RSA 633:3-a (2016) states a person commits the offense of stalking if such person: (1) purposely, knowingly, or recklessly engages in a course of conduct targeted at a specific person which would cause a reasonable person to fear for his or her personal safety or the safety of a member of that person's immediate family\*\*, and the person is actually placed in such fear; (2) engages in a course of conduct targeted at a specific individual, which the actor knows will place that individual in fear for his or her personal safety or the safety of a member of that individual's immediate family; (3) or after being served with, or otherwise provided notice of, a protective order that prohibits contact with a specific individual, engages in a single act of conduct that both violates the provision of the order. NH Rev Stat § 633:3-a (2016)

\*Course of conduct means two or more acts over a period of time, however short, which evidences a continuity of purpose. Such conduct includes: (1) Threatening the safety of the targeted person or an immediate family member; (2) Following, approaching, or confronting that person, or a member of that person's immediate family; (3) Appearing in close proximity to, or entering the person's residence, place of employment, school, or other place where the person can be found, or the residence, place of employment or school of a member of the

person's immediate family; (4) Causing damage to the person's residence or property or that of a member of the person's immediate family; (5) Placing an object on the person's property, either directly or through a third person, or that of an immediate family member; (6) Causing injury to that person's pet, or to a pet belonging to a member of that person's immediate family; (7) Any act of communication, as defined in Title LXII – Criminal Code RSA 644:4 – Harassment. NH Rev Stat § 644:4 (2016)

**\*\*Immediate family means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person. NH Rev Stat § 633:3-a (2016)**

## **E. Dating/Domestic Violence**

Dating/Domestic violence is defined a pattern of coercive behavior used by one person to gain and maintain power and control over another in the context of an intimate or familial relationship.

Dating Violence means physical or sexual violence; stalking; or verbal, emotional, mental/psychological, and economic abuse committed by a person:

- who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- where the existence of such a relationship will be determined based on a consideration of the following factors:
  - the length of the relationship;
  - the type of the relationship;
  - the frequency of interaction between the persons involved in the relationship.

Domestic Violence may involve threats, pushing, punching slapping, strangulation, sexual assault, shouting, name-calling, harming or threatening to harm children or pets, and other violent or intimidating behaviors by a person with whom the victim is or has cohabitated.

According to 2016 New Hampshire Revised Statutes Title LXII - CRIMINAL CODE Chapter 631 - ASSAULT AND RELATED OFFENSES Section 631:2-b - Domestic Violence includes felony or misdemeanor crimes of violence committed against a family or household member or intimate partner NH Rev Stat § 631:2-b (2016)

2016 New Hampshire Revised Statutes Title XII - PUBLIC SAFETY AND WELFARE Chapter 173-B - PROTECTION OF PERSONS FROM DOMESTIC VIOLENCE Section 173-B:1 – defines Domestic Violence as a commission or attempted commission of one or more of the acts described in subparagraphs (a) through (g) by a family or household member or by a current or former sexual or intimate partner, where such conduct is determined to constitute a credible present threat to

the petitioner's safety NH Rev Stat § 173-B:1 (2016). The court may consider evidence of such acts, regardless of their proximity in time to the filing of the petition, which, in combination with recent conduct, reflects an ongoing pattern of behavior, which reasonably causes or has caused the petitioner to fear for his or her safety or well-being:

Assault or reckless conduct as defined in 2016 New Hampshire Revised Statutes Title LXII - CRIMINAL CODE Chapter 633 - INTERFERENCE WITH FREEDOM NH Rev Stat § 633:1 (2016) NH Rev Stat § 633:3 (2016)

Criminal threatening as defined in 2016 New Hampshire Revised Statutes Title LXII - CRIMINAL CODE Chapter 631 - ASSAULT AND RELATED OFFENSES Section 631:4 - Criminal Threatening NH Rev Stat § 631:4 (2016)

Sexual assault as defined in 2016 New Hampshire Revised Statutes Title LXII - CRIMINAL CODE Chapter 632-A - SEXUAL ASSAULT AND RELATED OFFENSES NH Rev Stat § 632-A:2 (2016) NH Rev Stat § 632-A:3 (2016) NH Rev Stat § 632-A:4 (2016) NH Rev Stat § 632-A:5 (2016) Section 631:2-b - Domestic Violence.

Interference with freedom as defined in 2016 New Hampshire Revised Statutes Title LXII - CRIMINAL CODE Chapter 631 - ASSAULT AND RELATED OFFENSES NH Rev Stat § 633:1 (2016) NH Rev Stat § 633:2 (2016) NH Rev Stat § 633:3 (2016) NH Rev Stat § 633:3-a (2016)

Destruction of property as defined in 2016 New Hampshire Revised Statutes Title LXII - CRIMINAL CODE Chapter 634 - DESTRUCTION OF PROPERTY NH Rev Stat § 634:1 (2016) NH Rev Stat § 634:2 (2016)

Unauthorized entry as defined in 2016 New Hampshire Revised Statutes Title LXII - CRIMINAL CODE Chapter 635 - UNAUTHORIZED ENTRIES NH Rev Stat § 635:1 (2016) NH Rev Stat § 635:2 (2016)

Harassment as defined in 2016 New Hampshire Revised Statutes Title LXII - CRIMINAL CODE Chapter 644 - BREACHES OF THE PEACE AND RELATED OFFENSES NH Rev Stat § 644:4 (2016)

## **F. Coercion**

Coercion includes the use of pressure and/or oppressive behavior, including express or implied threats of harm, intimidation, which places an individual in fear of immediate or future harm or physical injury or causes a person to engage in unwelcome sexual activity. A person's words or conduct amount to coercion if they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity.

## G. Retaliation

Retaliation is defined as acts or attempts to retaliate or seek retribution against the complainant, respondent, or any individual or group of individuals involved in the sexual misconduct process are prohibited. Retaliation includes but is not limited to:

- intimidation,
- verbal or physical threats,
- harassment,
- coercion,
- or other adverse action.

It is a violation of college policy to retaliate in any way against an individual or a group because the individual or group of individuals reported an allegation of sexual misconduct. The college recognizes that retaliation can take many forms, may be committed by an individual or a group against an individual or a group, and that a respondent can also be the subject of retaliation by the complainant or a third party. The college will take responsive action to any report of retaliation and may pursue disciplinary action as appropriate. An individual reporting a violation of policy is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

## H. Consent

At Colby-Sawyer College, a person who is accused of sexual misconduct, the respondent must show he or she had evidence of **unequivocal consent** given by the person who complains of inappropriate sexual conduct or contact. The hearing forum may find for the complainant instead of the respondent unless there is evidence of unequivocal consent by one who is capable of offering it. If someone is incapable of offering consent, due to alcohol or drug consumption, underage status, or other limitation, then sexual activity should cease. Likewise, if someone is incapable of recognizing whether consent has or has not been given, then sexual activity should cease.

**Consent to engage in sexual activity must be knowing and voluntary:** Consent to engage in sexual activity must exist from the beginning to end of each instance of sexual activity, and for each form of sexual contact. Consent to one form of sexual contact does not constitute consent to all forms of sexual contact. For example, an individual may agree to kiss but choose not to engage in touching of the intimate parts or sexual intercourse. An individual should obtain consent before moving from one act to another.

**Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity:** Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response alone. A person who does not

physically resist or verbally refuse sexual activity is not necessarily giving consent. In the absence of an outward demonstration, consent does not exist. If at any time it is reasonably apparent that either party is hesitant, confused or uncertain, both parties should stop and obtain mutual verbal consent before continuing sexual activity.

**A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.** Even in the context of a relationship, there must be mutually understandable communication that clearly indicates willingness to engage in sexual activity each time such activity occurs.

**Consent may be withdrawn by either party at any time.** Withdrawal of consent must also be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.

**In the state of New Hampshire, consent can never be given by minors under the age of 16.**

**Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual contact.**

## **I. Incapacitation**

An individual who is incapacitated is not able to make rational, reasonable judgments and therefore is incapable of giving consent. Incapacitation is the inability, temporarily or permanently, to give consent, because the individual is mentally and/or physically helpless due to drug or alcohol consumption, either voluntarily or involuntarily, underage status, or other physical or mental injury or condition, or the individual is unconscious or semi-conscious, asleep or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if he/she/they demonstrate that they are unaware of where they are, how they got there, or why or how they became engaged in a sexual interaction.

Where alcohol or drugs are involved, incapacitation is a state beyond drunkenness or intoxication. With regard to alcohol or drugs, there are multiple levels of effect, along a continuum:

- Impairment, which occurs with the ingestion of any alcohol or drug;
- Intoxication, also called drunkenness, which is similar to the state's drunk driving limit;
- Incapacitation, which is a higher level of alcohol or drug consumption; and
- Overdose, or alcohol poisoning, which could lead to coma or death.

Some indicators of incapacitation may include, but are not limited to:

- lack of control over physical movements
- lack of awareness of circumstances or surroundings

- inability to communicate for any reason
- vomiting
- semi-consciousness or unconsciousness

One may not engage in sexual activity with another who one knows or should reasonably know to be mentally or physical incapacitated. The relevant standard that will be applied is **whether a reasonable person should have known that the other party was incapacitated** and therefore could not consent to the sexual activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not excuse one from the responsibility to obtain consent.

### Part III: Resources

The college is committed to treating all individuals with dignity, care and respect. Any individual affected by sexual misconduct, whether as a complainant or a respondent will have equal access to support services. The college recognizes that any individual involved in an incident of sexual misconduct may have questions and we encourage Colby-Sawyer community members and visitors to seek the support of campus and community resources. The college can provide guidance in making decisions, obtaining information about available resources, and assisting either party in the event that a report and/or resolution is pursued. Individuals are encouraged to use available resources, regardless of whether the incident occurred recently or in the past.

Complainants and respondents can expect:

- The opportunity to meet with the Title IX coordinator to answer questions regarding the college's complaint processes for students and employees.
- Notice of confidential resources, including health care and support services, on campus and in the local community.
- Notice of the option to pursue law enforcement action and to be assisted by Colby-Sawyer College Campus Safety or other college officials in accessing and communicating with such authorities. This notice will include a discussion of the importance of the preservation of evidence.
- The opportunity to request that the college take steps to prevent unnecessary or unwelcome contact or communication with another member of the Colby-Sawyer community.
- The right to be free from retaliation. Any concerns of retaliatory behavior should be immediately reported to Campus Safety or the Title IX deputy or Title IX coordinator.

#### A. Confidential Resources and Support

The college encourages all Colby-Sawyer community members and visitors to report an incident of sexual misconduct. The college recognizes, however, that there are many barriers to reporting, both individual and societal, and not every individual will choose to make a formal report with the college and/or with local law enforcement. For those individuals who are not



prepared to make a report, there are several confidential resources available for the college community member and visitors. Individuals seeking to talk to someone about an incident of sexual misconduct in a confidential manner without making a report to the college or triggering any investigation or action by the college may utilize the following confidential support resources. These resources hold a statutorily protected confidentiality that prohibits the release of an individual's information without that individual's express consent (except under limited circumstances that pose an imminent danger to the individual or to others.) The following resources are confidential:

**For Students:**

- **On-Campus: Baird Health & Counseling Center** - (603) 526-3621  
Counselors are available during regular office hours. Counselors are also available on call after hours and can be reached through the Campus Safety Emergency Line.
- **Off Campus: Crisis Center of Central New Hampshire** - (603) 225-7376  
The CCNH provides confidential crisis support 24 hours a day relating to rape, sexual assault, or dating and domestic violence via its 24-Hour Crisis Line: (800) 227-5570
- **Off Campus: New London Hospital** – (603) 526-2911  
New London Hospital provides 24 hour emergency care and is located a mile and a half from campus.

**For Employees:**

- **Employee Assistance Plan** - (800) 828-6025
- **Crisis Center of Central New Hampshire** - (603)225-7376  
The CCNH provides confidential crisis support 24 hours a day relating to rape or sexual assault via its 24-Hour Crisis Line: (800) 227-5570
- **New London Hospital** – (603) 526-2911  
New London Hospital provides 24 hour emergency care and is located a mile and a half from campus.

**For Colby-Sawyer Visitors:**

- **Crisis Center of Central New Hampshire** - (603)225-7376  
The CCNH provides confidential crisis support 24 hours a day relating to rape or sexual assault via its 24-Hour Crisis Line: (800) 227-5570
- **New London Hospital** – (603) 526-2911  
New London Hospital provides 24 hour emergency care and is located at 273 County Rd., New London, NH 03257.

## **B. Campus Resources**

In addition to the confidential resources listed above, all Colby-Sawyer community members and visitors have access to a variety of resources provided by the campus and community that can provide crisis intervention services, counseling, academic support, and medical services. All of the staff and faculty listed below are trained to support individuals affected by sexual

misconduct and to coordinate with the Title IX coordinator consistent with the college's commitment to a safe and healthy educational environment. While not bound by confidentiality, these resources will nevertheless maintain the privacy of an individual's information within the limited circle of those involved in the Title IX resolution process.

- **Vice President of Student Development and Dean of Students: Title IX Coordinator**

- Robin Burroughs Davis  
Phone: (603) 526-3752  
Address: Room 105 Ware Student Center  
\*Available during regular office hours.

- **Title IX Deputy Coordinators**

- Mary McLaughlin (students)  
Phone: (603) 526-3757  
Address: Room 106 Ware Student Center  
\*Available during regular office hours.
- Laura Alexander (faculty)  
Phone: (603) 526-3760  
Address: Room 131 Colgate Hall  
\*Available during regular office hours.
- Heather Zahn (staff, administration and visitors)  
Phone: (603) 526-3584  
Address: Room 230A Colgate Hall  
\*Available during regular office hours.

- **Colby-Sawyer College Campus Safety**

Phone: (603) 526-3300  
Address: 541 Main Street, New London, NH, 03257  
\*For on campus emergency reporting and/or non-regular office hours - Available 24 hours day.

- **Student Development Office**

Phone: (603) 526-3758  
Address: 541 Main Street, New London, NH, 03257  
Available during regular office hours and can assist with academic concerns, changes in housing or other accommodations and referrals to other resources.

- **Area Coordinators (AC's):** Area Coordinators are live-in professionals who play a critical role in the lives of students in the residence halls. The AC is a member of the Student Development team who reports directly to the Director of Residential Education.

- **Resident Assistants (RA's):** RAs are undergraduate students living in the residence halls who are employed by Residential Education and trained to refer students to campus resources.

### C. Community Resources

College community members, and visitors also access resources located in the local community. These organizations can provide crisis intervention services, counseling, and medical attention. In general, off-campus resources can provide assistance to individuals wishing to make a report to the college, but will not notify the college without the consent of the complainant. In addition to the confidential off-campus resources listed above, New London Police Department can provide non-confidential but private assistance in interfacing with the criminal justice system.

- **New London Police Department – (603) 526-2626**  
New London Police Department provides 24 hour assistance including Protective Orders and is located at 25 Seamans Rd., New London, NH 03257.

All individuals are encouraged to utilize the resources that are the best suited to their needs, whether on or off campus.

### D. College Statement on Privacy

The college is committed to maintaining the privacy of all individuals involved in a report of sexual misconduct. In any Title IX review of an allegation of sexual misconduct, every effort will be made to protect the privacy and interests of the individuals involved in a manner consistent with the need for a thorough review of the allegation. Such a review is essential to protecting the safety of the complainant, the respondent, and the broader campus community and to maintaining an environment free from sexual discrimination or other forms of sexual misconduct.

The privacy of the parties will be respected and safeguarded. Information related to a report of misconduct will be shared only with those college employees who “need to know” in order to assist in the investigation and/or disposition of the complaint. All college employees who are involved in the Title IX review process, including hearing panel members, have received specific training regarding the safeguarding of private information. College community members and visitors wishing to obtain confidential assistance through on-campus or off-campus resources without making a report to the college may do so by speaking with professionals who are obligated by law to maintain confidentiality. These professionals are identified in the Confidential Resources and Support as outlined in Part III.A.

When the college has received a report of sexual misconduct, but the complainant requests that his/her identity remain confidential or that the college not pursue an investigation, the college will balance this request with its responsibility to provide a safe and non-discriminatory environment for all college community members. The college will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or

request not to pursue an investigation. The college will seek to respect the request of the complainant, and where it cannot do so, the college will consult with the complainant and keep him/her/them informed about the chosen course of action.

If a report of misconduct discloses an immediate threat to the college campus community, the college may issue a timely notice of the conduct to the community to protect the health or safety of the broader campus community. This notice will not contain any biographical or other identifying information. Immediately threatening circumstances include, but are not limited to, recently reported incidents of sexual misconduct that include the use of force, a weapon, or other circumstances that represent a serious and ongoing threat to college students, faculty, administrators, staff, or visitors. All resolution proceedings are conducted in compliance with the requirements of FERPA, the Clery Act, Title IX, and college policy. No information shall be released from such proceedings except as required or permitted by law or college policy. For the complete Timely Warning policy and procedures, refer to the Annual Security and Fire Safety Report which can be found here: <http://colby-sawyer.edu/clery-act>.

## **Part IV. Reporting**

All college employees, including faculty, staff, and administrators, student employees who have a responsibility for student welfare, and student volunteers who have a responsibility for student welfare, are required to share with the Title IX coordinator any report of sexual misconduct they receive or of which they become aware.

An example of student employees who have a duty to share the information with the Title IX coordinator include Resident Assistants.

All persons, even those who are not employed by or affiliated with the college or who are not obligated by this policy, are strongly encouraged to report information regarding any incident of sexual misconduct to the Title IX coordinator or Title IX deputy coordinators.

The Title IX deputy coordinators, working with the Title IX coordinator, will ensure that the college responds to all reports in a timely, effective and consistent manner. The Title IX deputy coordinators are: the director of human resources, the director of residential education, and the academic vice president and dean of faculty.

The college will promptly investigate and respond to reports of sexual misconduct to the extent feasible. The college will respond to reports in an integrated, consistent manner that treats each individual with dignity and respect. The college will approach each report with an earnest intent to understand the perspective and experiences of each individual involved in order to ensure fair and impartial evaluation and resolution.

The college is committed to providing a variety of welcoming and accessible means so that that all instances of sexual misconduct will be reported. The college also recognizes that the decision whether

or not to report sexual misconduct is personal, and that there are many barriers to reporting, both individual and societal. Not every individual will be prepared to make a report to the college or to law enforcement, and individuals are not expected or required to pursue a specific course of action.

An incident does not have to occur on campus to be reported to the college. Off-campus conduct that adversely affects the college or the Colby-Sawyer community also falls under this policy.

An individual does not have to decide whether or not to request disciplinary action at the time the report is made. The college recognizes that choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The college will respect an individual's autonomy in making these important decisions and provide support that will assist each individual in making that determination.

As outlined in the Resources section of this policy, there are confidential resources on campus and in the community available to individuals not wishing to make a make a report to the college. Information shared with these confidential resources will not be reported to the college. For more information on confidential resources and support, please refer to the Confidential Resources and Support section outlined in Part III.A.

As outlined in the College Statement on Privacy, the college respects the privacy interests of student, faculty, and staff. All information reported will be shared only with those college employees who will assist in the investigation and/or resolution of the complaint. For more information on privacy, please refer to the College Statement on Privacy section outlined in Part III.D.

### **A. Emergency/Immediate Reporting Options**

The college encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual misconduct. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. The college will assist any Colby-Sawyer community member to get to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about the college's resources and complaint processes.

Assistance is available from the college 24 hours a day year-round by calling Colby-Sawyer College Campus Safety. Any individual can request that a member of Campus Safety respond and take a report, or request support services. There is no requirement that an individual file an incident report with Campus Safety in order to speak with a member of the Baird Health & Counseling Center or outside counseling provider.

A medical provider can provide emergency and/or follow-up medical services, and the ability to discuss health care concerns related to the incident in a confidential medical setting. A medical exam may have two goals: first, to diagnose and treat the full extent of any injury or physical effect (sexually transmitted infection or pregnancy) and second, to properly collect and preserve

evidence. There is a limited window of time (typically 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately should be performed by a SANE trained provider and does not commit an individual to any course of action. The decision to seek medical attention and gather any evidence will remain confidential and preserve the full range of options to seek resolution through the college's complaint processes or through the pursuit of criminal action.

**Emergency/Immediate Reporting Options:**

- **911**
- **New London Police Department** (603) 526-2626
- **New London Hospital** (603) 526-2911
- **Colby-Sawyer College Campus Safety** (603) 526-3300
- **Baird Health & Counseling** (603) 526-3621

\*Nurses and counselors are available during regular office hours. After hours, counselors can be reached by contacting Campus Safety (603) 526-3300.

## **B. Campus Reporting Options**

The college recognizes that a student or employee may choose to report sexual misconduct to any trusted employee of the college. For example, a student may choose to confide in a Resident Assistant, a faculty member, or a coach, all of whom are considered “responsible employees” who must report the incident under this policy. An employee may choose to confide in a supervisor, also considered a “responsible employee.” Under this policy, any employee who receives a report of sexual misconduct must share the report with the Title IX coordinator. The Title IX coordinator is specifically charged with investigating and responding to allegations of sexual misconduct.

To enable the college to respond to all reports in a prompt and equitable manner, the college encourages all individuals to directly report any incident of sexual misconduct to the Title IX coordinator or a Title IX deputy coordinator.

## **C. Anonymous Reporting**

Any individual may make an anonymous report concerning an act of sexual misconduct. An individual may report the incident without disclosing his/her name, identifying the respondent or requesting any action. Depending on the level of information available about the incident or the individuals involved, however, the college's ability to respond to an anonymous report may be limited. Anonymous reports may be made by downloading the [Sexual Misconduct Report Form](#), printing out the form and completing and returning it to the Director of Campus Safety. All reports will go to the Title IX coordinator.

#### **D. Reporting Patterns of Sexual Harassment or Stalking**

In the event that an individual believes that he/she/they may be experiencing behavior that points to a pattern of sexual harassment or stalking, he/she/they should document that behavior and report it to the Title IX coordinator or a deputy coordinator.

#### **E. Time Frame for Initial Reporting**

Individuals are encouraged to report sexual misconduct immediately in order to maximize the college's ability to respond promptly and equitably. The college does not, however, limit the time frame for reporting. The college will not be able to pursue disciplinary action against an individual who is no longer affiliated with the college. Under those circumstances, the college will still conduct a Title IX review.

#### **F. Coordination with Law Enforcement**

The college encourages complainants to pursue criminal action for incidents of sexual misconduct that may also be crimes under New Hampshire law. In every case of sexual violence, the college, through the Director of Campus Safety, will notify the New London Police Department of the allegations. The college will also assist a complainant in making a criminal report and will cooperate with law enforcement agencies if a complainant decides to pursue the criminal process to the extent permitted by law. However, a complainant may also choose not to pursue criminal action, and under most circumstances, the New London Police Department will not force a complainant to pursue charges if he/she/they are not willing to do so.

The filing and processing of a complaint of sexual misconduct with the college is independent of any criminal investigation or proceeding. The college will not wait for the conclusion of any criminal investigation or proceedings to begin its own investigation and proceedings outlined herein. Neither law enforcement's determination whether or not to prosecute a respondent, nor the outcome of any criminal prosecution, will dictate whether or not sexual misconduct under the college policy occurred. Proceedings under the college's Sexual Misconduct Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.

#### **G. Amnesty for Students Who Report Sexual Misconduct**

The college encourages reporting and seeks to remove any barriers to reporting by making the procedures for reporting transparent and straightforward. The college recognizes that an individual who has been drinking or using drugs at the time of the incident may be hesitant to make a report because of potential Student Conduct System consequences for his/her/their own conduct. An individual who reports sexual misconduct, either as a student complainant or a student third party witness, will not be subject to disciplinary action by the college for his/her/their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other

person at risk. The college may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

## **H. Bystander Intervention**

The college expects all community members to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Taking action may include direct intervention, calling campus safety or local law enforcement, or seeking assistance from a person in authority. Community members who choose to exercise this positive moral obligation will be supported by the college and protected from retaliation.

## **Part V: Title IX Review**

### **A. Role of the Title IX Coordinator**

Robin Burroughs Davis, Vice President of Student Development and Dean of Students, serves as the Title IX coordinator. In her role as Title IX coordinator, she oversees the college's centralized review, investigation and report resolution process for sexual misconduct. She also coordinates the college's compliance with Title IX. The Title IX coordinator is supported by several college administrators who serve as deputy Title IX coordinators. Each is knowledgeable and trained in state and federal laws that apply to matters of sexual misconduct as well as college policy and procedure. The Title IX and deputy Title IX coordinators can be contacted by telephone, email, or in person during regular office hours.

The duties and responsibilities of the Title IX and deputy Title IX coordinators include training, education and climate checks as well as the oversight of procedures that promptly and equitably eliminate sexual misconduct prevent its recurrence and address its effects on individuals and our community. The Title IX coordinator will:

- Oversee the investigation and resolution of sexual misconduct;
- Consult with appropriate offices to offer appropriate interim measures for a complainant or respondent as well as procedural options on and off campus;
- Ensure prompt and equitable resolutions that comply with all requirements and time frames specified in the complaint procedures;
- Conduct on-going and annual climate checks, tracking, and monitoring of sexual misconduct allegations on campus; and,
- Coordinate all training, education and prevention efforts.

#### **Title IX Coordinator: Vice President of Student Development and Dean of Students**

- Robin Burroughs Davis  
Phone: (603) 526-3752  
Address: Room 105 Ware Student Center  
\*Available during regular office hours.



## B. Role of the Title IX Deputies

While a report may emerge through many sources, the college is committed to ensuring that all reports are brought to the college's Title IX coordinator. The Title IX coordinator assisted by her designated deputies, ensures consistent application of the policy to all individuals and allows the college to respond promptly and equitably to eliminate the misconduct, prevent its recurrence and address its effects. The Title IX coordinator coordinates the review, investigation and resolution of the report and ensures that all appropriate interim measures are implemented.

The Title IX coordinator oversees the resolution of reported misconduct through the college's complaint processes. The process will be determined by the role of the respondent:

- Complaints against students will be resolved by the student conduct Sexual Misconduct Hearing Board.
- Complaints against employees will be resolved according to Employee Handbook.
- Complaints against faculty will be resolved according to the Faculty Handbook and Employee Handbook.

Each process is guided by the same principles of fairness and respect for all parties. Resources are available for both students, employees, and visitors whether as complainants or respondents, to provide guidance throughout the investigation and resolution of the complaint.

### **Title IX Deputy Coordinators:**

- Mary McLaughlin (students)  
Phone: (603) 526-3757  
Address: Room 106 Ware Student Center  
\*Available during regular office hours.
- Laura Sykes (faculty)  
Phone: (603) 526-3760  
Address: Room 131 Colgate Hall  
\*Available during regular office hours.
- Heather Zahn (staff and visitors)  
Phone: (603) 526-3584  
Address: Room 230A Colgate Hall  
\*Available during regular office hours.

## C. Initial Assessment

The college will address all reports of sexual misconduct. The Title IX coordinator will oversee the college's Title IX review process.

In every report of sexual misconduct, the college, through the Title IX coordinator will make an initial assessment of any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. These steps will include interim measures to provide for the safety of the individual and the campus community.

The college's responsibility to review and respond to all allegations of misconduct exists regardless of whether that review culminates in additional investigation or, ultimately, goes before a Sexual Misconduct Hearing Board, and exists independently of the criminal justice process.

#### **D. Investigation**

The Title IX coordinator will determine if an investigation of the report of sexual misconduct should be conducted. This determination is based on a variety of factors, such as the complainant's wish to pursue disciplinary action, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation. The Title IX coordinator may designate an investigator of her choosing. Any investigator used by the college must have specific training and experience investigating allegations of sexual misconduct.

The investigator will coordinate the gathering of information from the complainant, the respondent, and any other individuals who may have information relevant to the determination. The investigator will also gather any available physical or medical evidence, including documents, communications between the parties, and other electronic records as appropriate. In gathering such information, the investigator will comply with applicable laws and Colby-Sawyer College policies. The investigation will be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and respect.

As described in the College Statement on Privacy, all college investigations will respect individual privacy concerns. For more information on privacy please refer to the College Statement on Privacy outlined in Part III.D.

Information gathered during the investigation will be used to evaluate the responsibility of the respondent, provide for the safety of the individual and the college campus community, and impose remedies as necessary to address the effects of the alleged conduct. Any investigative report will serve as the foundation for all related resolution processes.

### **Part VI: Interim Measures**

Upon receipt of a report, the college will provide interim support and reasonable protective measures to prevent further acts of misconduct, and to provide a safe educational and work environment. The college will determine the necessity and scope of any interim measures. Even when a complainant or respondent does not specifically request that protective action be taken, the college may choose to impose interim measures at its discretion to ensure the safety of any individual, the broader college community or the integrity of the review process. Interim measures will be imposed in a way that minimizes the burden on the complainant to the extent possible while balancing the rights of the respondent.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The college will take immediate and responsive action to enforce measures previously ordered or implemented by the college.

The college may impose any remedy that can be tailored to the involved parties to achieve the goals of this policy, even if not specifically listed here. The range of interim measures may include:

- **No Contact Order:** A complainant or respondent may request, or the college may impose, communication and contact restrictions to prevent further potentially harmful interaction. These communication and contact restrictions generally preclude in person, telephone, electronic or third party communications. In some cases, an individual may also wish to consider a Temporary Restraining Order from the local courts. This is a civil proceeding independent of the college. If a court order is issued the college will, to the extent possible, assist the protected person in benefiting from the restrictions imposed by the court and will also facilitate on campus compliance with the order. The college may also limit an individual or organization's access to certain college facilities or activities as part of the no contact order.

Students seeking a no-contact order during regular business hours should contact the Title IX coordinator or deputy coordinator to make such request. Students seeking a no-contact order during non-business hours should contact Campus Safety, who will coordinate such requests on the behalf of the student. Information will be maintained as private as long as it does not hinder the college's ability to provide interim measures. The college will maintain contact with the parties to ensure that all safety and emotional and physical well-being concerns are being addressed.

- **Academic, Employment, Residence, or Other Modifications:** A complainant or respondent may request an academic or employment accommodation or a change in residence after a report of sexual misconduct, dating or domestic violence. An individual who requests assistance in changing his/her academic or living situation after an incident of sexual misconduct will receive appropriate and reasonably available accommodations. These may include:
  - Academic accommodations, including a change in class schedule, taking an incomplete, dropping a course without penalty, attending a class via Skype or other alternative means, providing an academic tutor, or extending deadlines for assignments;
  - Change of residence hall assignment;
  - Change in work assignment or schedule or administrative leave;
  - Providing an escort to ensure safe movement between classes and activities.
- **Emotional Support:** The college will provide support services through the Baird Health & Counseling Center and/or will assist in providing a referral to off-campus agencies as detailed in the Campus and Community Resources section of this policy. Emotional support is available to any member of the campus community.
- **Interim Removal** – Whenever there is evidence that the continued presence of a student in the residential community poses a substantial threat to him/herself or to others or to the stability and continuance of normal residence life functions, the college may remove the respondent

from housing for an interim period pending resolution of the complaint. Such interim removal becomes immediately effective without prior notice. A student who has been removed from campus housing on an interim basis may still attend classes and other campus activities as determined by the vice president for student development and dean of students.

- **Interim Suspension:** Where the report of misconduct poses an ongoing risk of harm to the safety or well-being of an individual or members of the campus community, the college may place an individual or organization on interim suspension or impose leave for an employee. Pending resolution of the complaint, the individual or organization may be denied access to campus. When interim suspension or leave is imposed, the college will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

## Part VII: Procedures for Addressing Colby-Sawyer College Sexual Misconduct Grievance Procedures

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## A. Introduction

The college has established a Sexual Misconduct Policy that articulates the college's behavioral standards, definitions and key terms. The policy also outlines the college's procedures for addressing reports of sexual misconduct. Below are the procedures for resolving a sexual misconduct complaint against a student through the Colby-Sawyer College Student Sexual Misconduct Process.

## B. Preliminary Matters

1. **Terms Defined:**
  - a. **Complainant:** Refers to the individual who believes him, herself, their selves to have been the subject of sexual misconduct.
  - b. **Respondent:** Refers to the individual who has been accused of sexual misconduct
  - c. **Third party:** Refers to any other person than the complainant or respondent who makes a report on behalf of someone else alleging violations of sexual misconduct.
2. **Timing of Complaints:** So long as the respondent is a student there is no time limit on filing a complaint to engage the student conduct process. However, complainants are strongly encouraged to report sexual misconduct in a timely manner to maximize the college's ability to obtain evidence and to conduct a thorough, impartial and reliable investigation and if needed, the resolution process.
3. **Jurisdiction:**
  - **For students:** Please refer to the "*Jurisdiction*" that is outlined in the Code of Community Responsibility for information about Jurisdiction.
  - **For college employees** (including staff/faculty/contracted employees): Please refer to Appendix A for information about Jurisdiction.
4. **Complainant/Respondent Hearing Rights:** Please see Appendix B.
5. **Effect of Criminal Proceedings:** The filing and processing of a complaint of sexual misconduct with the college is independent of any criminal investigation or proceeding. The college will not wait for the conclusion of any criminal investigation or proceedings to begin its own investigation and proceedings outlined herein. Neither law enforcement's determination whether or not to prosecute a respondent, nor the outcome of any criminal prosecution, will dictate whether or not sexual misconduct under the college policy occurred.

- 6. Effect of Pending Complaint on Respondent:** If the respondent is a current student, no notation will be placed on the respondent's transcript of a complaint or pending disciplinary action during the conduct proceedings. If the respondent withdraws from the college while a sexual misconduct complaint is pending, the respondent's transcript will reflect a withdrawal and a notation of pending disciplinary action will be placed in the student's conduct file and academic transcript. If the respondent is a current employee and if the employee terminates employment prior to the resolution of an investigation or disciplinary matter, the case will be considered pending and a notation of the pending matter placed in the employee's file.
- 7. Amnesty:** For information regarding amnesty for students please refer to the Amnesty for Students Who Report Sexual Misconduct policy outlined in Part IV.G.
- 8. Support Person:** Complainant and respondent both have the right to be assisted by a support person of their choosing during the sexual misconduct grievance process. A support person serves as personal and emotional support to the complainant or respondent and may accompany the individual to any grievance related meeting with a college employee and/or the hearing forum. The support person must be available at the time of scheduled grievance meetings, investigation, or hearing portion of the process. Although the support person may be present, he/she may not speak on behalf of the complainant or respondent being supported and may not direct questions to or otherwise address the administrators of the grievance process, investigator, or a member of Sexual Misconduct Hearing Board (Hearing Board). The support person may consult with the individual that he or she is assisting. Disruptive behavior by the support person will result in removal from meetings, the investigative or hearing process. To ensure a fair and equitable process for all parties, administrators of the process, anyone in the administration who supervises a participant in the process as an employee, any witness, and/or anyone who is being strategically chosen to deprive another party of a fair and equitable process, may not serve as a support person.

The complainant will be encouraged to choose a support person at the time the complaint is filed and the respondent will be encouraged to choose a support person at the time he/she/they are notified of the complaint. The support person will need to sign a confidentiality statement prior to any discussion of the allegation.

If the complainant or respondent wants to disclose any of his/her educational records to the support person, the complainant or respondent would need to sign a written authorization and have the support person sign as well prior to any disclosures of their records.

Note: Colby-Sawyer College's attorney may be present to provide legal counsel to the investigator, the Title IX coordinator and to the hearing board members to include the hearing advisor or administrator.

- 9. Agreements Not Recognized by the College:** Other than a court order, the college will not recognize agreements between the complainant and respondent in which the college did not participate.

- 10. Time Frames:** The investigation and resolution, excluding appeals, of all reports will generally be completed within 60-90 days. Extenuating circumstances beyond the college's control may arise (i.e. complexity of the case, summer months and/or break periods) that require the process to extend beyond this timeframe. Should that be the case, the parties will be notified as appropriate. In general, a complainant and respondent can expect to receive periodic updates as to the status of the review or investigation.
- 11. Communications:** All communications and notices concerning an allegation of sexual misconduct that are made to the complainant, or respondent may be made electronically, in hard copy, or in person.

### C. Initiating a Complaint

- 1. Individual:** Any person, who has experienced an incident of sexual misconduct, as defined in the Sexual Misconduct Policy, may file a complaint against a Colby-Sawyer College student, faculty or staff alleged to be responsible for that conduct. "Person" may include any member of Colby-Sawyer College, including students, faculty, administrators, and staff members, or visitors. A person wishing to file a complaint must contact the Title IX coordinator, a deputy Title IX coordinator, or in the case of afterhours and emergency situations, Campus Safety. (All references to the Title IX coordinator in this policy implicitly include the deputy Title IX coordinator(s).)

As set forth in the Sexual Misconduct Policy, reports of sexual misconduct undergo a Title IX review (see Part V for Title IX Review) to determine the appropriate response.

- 2. Administrative:** In exceptional cases, such as cases threatening community safety, the college may initiate a complaint through the Title IX coordinator.

### D. Filing Requirements

Any person wishing to submit a complaint will submit the complaint to the Title IX coordinator or in the case of afterhours and emergency situations, Campus Safety. The statement of complaint should contain sufficient information to permit the respondent to understand the charges being brought and to be able to adequately respond. The statement may not reflect every detail related to the allegations in the complaint as additional information may be discovered during the investigation. In cases involving a third party reporter submitting a report, the third party should also provide sufficient information that will identify the complainant (as defined in the *Purpose* section of this document) to ensure the college is able to adequately reach out to the person and provide resources etc.

### E. Title IX Review

The Title IX coordinator will review the statement of complaint to determine if the college should conduct an investigation of the report of sexual misconduct. The Title IX coordinator's determination is based on a variety of factors, such as the complainant's desire to pursue

disciplinary action, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation. The Title IX coordinator may designate an investigator of its choosing. Any investigator used by the college must have specific training and experience investigating allegations of sexual misconduct.

## **F. Interim Measures**

Upon the filing of a complaint, the Title IX coordinator will review the allegations as well as any possible interim measures that may be appropriate to help prevent further acts of harassment, misconduct, or retaliation and to provide a safe educational and work environment. The range of interim measures may include, but not be limited to:

1. No Contact Order
2. Academic, Employment or Residence Modifications
3. Emotional Support
4. Interim Suspension
5. Administrative Leave (for employees)

For more information specific to interim measures, please refer to the Interim Measures outlined in Part VI.

## **G. Information for Complainant**

After receipt of the complaint, the Title IX coordinator will notify the complainant of the option to have a support person. For more information specific to support person, please refer to the Preliminary Matters of this document. The Title IX coordinator will also provide the complainant information regarding the hearing rights of the complainant and respondent, explain the prohibition against retaliation, explain the resolution process including investigation, investigator's report, and Sexual Misconduct Hearing Board process, instruct the complainant not to destroy any potentially relevant documentation in any format, and give the complainant a copy of the relevant policies. Once the investigation into the matter is complete, the Title IX coordinator will provide the complainant the materials collected as part of the investigation for a final review.

## **H. Withdrawal of Complaint**

Prior to the conclusion of the investigation, the complainant may withdraw the sexual misconduct complaint by contacting the Title IX coordinator. Withdrawal of the complaint will, in most circumstances, end the conduct process. The college reserves the right to move forward with the complaint, even after the complainant withdraws it, in order to protect the interests and safety of the college community.

## **I. Information for the Respondent**

Within five (5) to seven (7) days of receiving notice of the complaint, the Title IX coordinator will contact the respondent. The Title IX coordinator will discuss the nature of the complaint, provide the option to select a support person (for more information specific to support person,



please refer to the Preliminary Matters outlined in Part VII.B.) explain the hearing rights and of the complainant and respondent, explain the prohibition against retaliation, explain the resolution process including investigation, summary report, and Sexual Misconduct Hearing Board process, instruct the respondent not to destroy any potentially relevant documentation in any format, and give the respondent a copy of the relevant policies. If the respondent fails to meet and cooperate with the Title IX coordinator, investigator, hearing advisor or attend the hearing the grievance process will proceed without input from the respondent. Once the investigation into the matter is complete, the Title IX coordinator will provide the respondent the materials collected as part of the investigation for a final review.

#### **J. Acceptance of Responsibility:**

At any point in the Title IX review process or investigatory process, the respondent may accept responsibility for the conduct alleged in the complaint. In such cases, the process will immediately move to the Sexual Misconduct Hearing Board for a decision regarding sanctioning.

#### **K. Investigation Phase**

- 1. Investigator:** The Title IX coordinator will designate an investigator of his/her choosing to conduct a thorough, impartial and fair investigation. The investigator chosen will have specific training and experience investigating allegations of sexual misconduct. The investigator may, with the approval of the Title IX coordinator, request assistance from another trained investigator.
- 2. Investigation Process:** The investigator will coordinate the gathering of information from the complainant, respondent, and other individuals or entities with relevant information regarding the complaint using any of the following processes.
  - a. Document/Records Review:** In addition to reviewing any documents submitted by the complainant and respondent, the investigator will try to obtain such other physical or medical evidence relevant to the investigation as the investigator determines, in his or her judgment, to be necessary, including but not limited to documents, police records, electronic or other record of communications between the parties or witnesses, records or other relevant information. In obtaining such evidence, the Investigator will comply with applicable state and federal laws and Colby-Sawyer College policies.
  - b. Site Visits:** The investigator may visit relevant sites or locations and record observations through written or photographic documentation.
  - c. Complainant and Respondent Interviews:** The investigator will interview the complainant and the respondent separately and may interview one or both more than once as necessary. The complainant and respondent may be accompanied by their respective support persons.
  - d. Witness Interviews:** The investigator will make a good faith effort to contact and interview any witnesses identified by the parties or in the documentation, including those no longer at the college. The investigator may also interview any other individual he or she finds to be potentially relevant to the allegations of the complaint. The

investigator will inform each witness or other individual interviewed that they are prohibited from retaliating against the complainant and respondent or other witnesses.

- e. **Experts:** The investigator may contact any expert the investigator determines is necessary to ascertain the facts related to the complaint. An expert witness may be contacted for an informal consult or for a professional opinion regarding information learned from the investigation.

If the complainant does not participate in the investigation after the complaint is filed, the college may still move forward. The college reserves the right to move forward with the complaint, even after the complainant withdraws it, in order to protect the interests and safety of the college community.

### 3. Investigator's Report:

- a. **Contents** The investigator will prepare an investigator's report summarizing relevant facts determined through the investigation and referencing any supporting documentation or statements. The investigator's report may include summaries of interviews with the complainant, respondent, third-party witnesses, experts, and any other individuals with relevant information, photographs of relevant sites or physical evidence, electronic records and forensic evidence. The investigator will forward the completed report to the Title IX coordinator.
- b. **Distribution to Parties** Once the Title IX coordinator has reviewed the report, he or she will provide a copy of the report to the complainant and the respondent.
- c. **Response** Once the report is distributed to the parties, each party will have three (3) days to respond in writing to the investigator with any additional information or additional witnesses. The investigator will notify the Title IX coordinator of the additional information.
- d. **Closure** Once the response period is over, the investigation will be considered closed and no new information will be gathered.

## L. Title IX Administrative Review

The Title IX coordinator, in consultation with a deputy coordinator or other appropriate college official(s), will conduct an administrative review of the investigator's report. The purpose of the administrative review is to determine whether the investigation is prompt, fair, impartial and thorough. If the Title IX coordinator determines the investigation is deficient, the Title IX coordinator shall send the matter back to the investigator for further investigation. In the event of bias on the part of the Investigator, the Title IX coordinator will appoint a new investigator.

If the Title IX coordinator determines that the investigation is prompt, fair, impartial and thorough, the Title IX coordinator will then consider whether the information contained in the report substantiates a charge of a violation of Colby-Sawyer College's Sexual Misconduct Policy.

Note: A finding that there is enough information to substantiate a charge of violation of the college's Sexual Misconduct Policies does not automatically mean the respondent is responsible

for the alleged violation, merely that there is enough information to proceed with a formal hearing process under the Sexual Misconduct Policies and Procedures.

If the investigation does not substantiate a charge for alleged sexual misconduct policy violations, the Title IX matter and inquiry of alleged violation(s) of the college's sexual misconduct policies will be considered closed. The investigator's report will be maintained in the Title IX coordinator's office for a period of seven years to ensure compliance with the Jeanne Clery Act. Where there is evidence of a pattern or similar prohibited conduct, regardless of whether there has been a finding of a policy violation, that information may be deemed relevant to the determination of another violation regardless of whether a separate policy violation has occurred.

## **M. Resolution**

### **1. Voluntary Resolution:**

A complainant and a respondent may choose to resolve a complaint through voluntary resolution. Voluntary resolution may include mediation. However, though the 2017 guidance from the Office of Civil rights permits voluntary resolution for cases of sexual misconduct, Colby-Sawyer College policy is that voluntary resolution may only be used:

- a. Prior to the commencement of a hearing;
- b. When the complainant and respondent agree to use the process with approval from the Title IX coordinator or deputy coordinator.
- c. When the complaint does not involve sexual assault, stalking, dating, and domestic violence.

Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved, an appeal of the process and its result is not permitted. If the parties are unable to agree on a voluntary resolution, the matter will be referred by the Title IX coordinator or deputy coordinator to be investigated and, if the investigation finds that enough information is present to substantiate a charge of violation, a Sexual Misconduct Hearing Board will convene for formal resolution.

### **2. Sexual Misconduct Hearing Process:**

The Sexual Misconduct Hearing Board will review the information and make a determination of responsibility or no responsibility based on a more likely than not standard. Should the Sexual Misconduct Hearing Board determine the respondent is responsible for the alleged violation, it will then determine an appropriate sanction.

- **Sexual Misconduct Hearing Board:** Composition of Sexual Misconduct Hearing Board shall consist of no less than three (3) members, and it shall be drawn from a pool of faculty and staff who are annually trained in the area of sexual misconduct. A professional faculty/staff member will serve as a chair for the hearing. All board members are provided with an initial training period (approximately six (6) hours) to include an observation of a hearing, followed by meetings/hearings as needed hear cases, make findings, and assign appropriate sanctions. Sexual Misconduct Hearing board members are also provided training specific to Title IX. Typically, Sexual Misconduct Hearing Boards will be referred cases of alleged Sexual Misconduct conduct

violations that could result in sanctioning from warning, probationary status, housing contract revocation/visitation revocation, suspension or dismissal for findings of responsibility.

- **Board Advisor:** Sexual Misconduct Hearing Boards will also have a hearing board advisor. The hearing board advisor refers to a college official designated by the vice president of student development and dean of students to advise hearing board members, complainants, and respondents on procedural issues related to the hearing process and policies as outlined in the Code and sexual misconduct policy and procedures.
- **Conflict of interest:** Persons will be prohibited from serving as a hearing officer or board member if a reasonable person could conclude that the person's involvement would likely constitute a conflict of interest by compromising any portion of the investigatory process, review process, and/or any decision process. Some examples that would create a conflict of interest are, but are not limited too; (1) her/she/they has personal knowledge about the facts that are going to be considered as evidence throughout any portion of the process; (2) her/she/they has served as an support person to the reporting third party, the complainant, and/or the respondent in connection with the alleged policy violation; (3) he/she/they or a member of his/her immediate family has an interest (financial or otherwise) in the outcome of the case in question; and/or (4) an objective and reasonable person would question his/her/they impartiality or bias. When in question, the hearing board advisor will make the final determination if a bias exist. In the event the hearing board advisor makes such determination, the person in question will be replaced with another person to carry out the function(s). The hearing board advisor's decision will be final. In cases that the hearing board advisor is alleged to have some impartiality or bias, the director of citizenship education, the vice president of student development and/or dean of students, or his/her designee will make the final determination regarding impartiality or bias and any required reassignment. The college reserves the right to select an impartial investigator, reviewer, or decision maker from outside the college in the event no-one from within the institution is comfortable or able to serve in such role.
- **For college's Sexual Misconduct Administrative Hearing Process: Complainant and Respondent rights, refer to Appendix B in this document.**
  - a. **Factors to be Considered When Determining a Sanction**

In determining an appropriate sanction, the Sexual Misconduct Hearing Board will take into account the following considerations: the seriousness of the violation; sanctions typically imposed for similar violations; prior disciplinary history; and any other circumstances indicating that the sanction should be more or less severe.
  - **For students:** Sanctions may include but are not limited to one or more of the following: dismissal; suspension; housing contract revocation; housing contract probation; housing restriction or relocation; educational/counseling

requirement; no-contact order; and/or restriction from specific college programs or activities. Please refer to the Sanctions section that is outlined in the Code of Community Responsibility for definitions of sanctions that could be imposed.

- **For employees:** Sanctions may include but are not limited to one or more of the following: involuntary separation/termination, suspension/administrative leave, job restriction or reassignment, and/or performance notice/counseling.

### **3. Appeal Process**

See Appendix C for the Appeal's section specific to Sexual Misconduct hearing process.

### **4. Records Maintained**

- **For students:** Information regarding student conduct records, see the Records section of the Code of Community Responsibility.
- **For employees:** Information regarding employee misconduct, please contact the college's Human Resources office.

## Appendix A: Jurisdiction of Colby-Sawyer College Sexual Misconduct Policy and Procedures

**For Students:** Please refer to the “Jurisdiction” that is outlined in the Code of Community Responsibility (Part II.A.1-4) for information about Jurisdiction.

**For Employees:** (faculty, staff, independent contractors)

1. Each employee shall be responsible for his/her conduct from the date of hire through the termination of employment by either party. If an employee terminates employment prior to the resolution of an investigation or disciplinary matter, the case will be considered pending and a notation of the pending matter placed in the employee’s file.
2. Generally, the college jurisdiction shall be limited to employee conduct that occurs on college premises or in connection with college-sponsored or supervised event, program, and activity. However, the college may apply its Sexual Misconduct Policies and Procedures to employees whose misconduct may have an adverse impact on the college community, its members, and/or the pursuit of its objectives regardless of where such conduct occurs.
3. Sexual Misconduct or Title IX proceedings may be initiated against an employee charged with conduct that potentially violates both the criminal law and Colby-Sawyer College policy. In this case any violations must result from the same factual situation. This may constitute disciplinary action without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. College proceedings may be carried out prior to or simultaneously with civil or criminal proceedings. The college cooperates with law enforcement and other agencies in the enforcement of laws on campus that may involve students and other employee’s. This includes providing information requested by subpoena or otherwise permitted by law.

Decisions or sanctions imposed shall not be subject to change due to criminal charges arising out of the same facts.

## Appendix B: Complainant and Respondent Rights in Regards to Sexual Misconduct Administrative Hearing Process

The respondent(s) and complainant(s), if applicable, shall have the **right to**:

- ☐ Be notified of all alleged violations by means of the address on file (assigned college mailing address, residence hall address via. hand delivery, permanent address, college email, or in person).
- ☐ Review the completed incident report and any associated statements that will be used at the hearing.
- ☐ Request a meeting with a department member from the Department of Citizenship Education to discuss questions or concerns pertaining to the policies and/or the hearing process.
- ☐ A reasonable period of time to prepare for a hearing (no less than 48 hours prior to the start of the hearing).
- ☐ Request a delay of a hearing due to extenuating circumstances. Note: The decision to grant or deny any such request is within the discretion of the hearing advisor and/or the vice president of student development and dean of students.
- ☐ Be informed of any person's name that submits/reports information that alleges misconduct and/or submits a complaint.
- ☐ Be informed of the identity of witnesses who have been called and requested to present information at the hearing.
- ☐ Be present and participate throughout the fact gathering portion of the hearing process. The deliberations and sanctioning phase of the hearing are private and will be closed.
- ☐ Be notified of the finding(s) of a hearing and assigned sanctions (if appropriate).
- ☐ In cases involving Sexual Misconduct Policy and Procedures, complainant(s) will be notified of the findings of the respondent(s)
- ☐ Present witnesses and incident witness statements (that is not included in the incident reports and statement) when deemed appropriate and relevant by the hearing board or hearing board advisor. This information will need to be disclosed to the hearing advisor no less than 48 hours prior to the start of the hearing. The hearing board chair and/or the hearing board advisor will make the determination whether or not to call the witness in to the hearing and/or review the information provided in the additional statements. If a witness is called to the hearing the witness will provide information to and answer questions from the hearing board members or hearing officer. Questions may be suggested to the chair of the hearing by a respondent or complainant. All questions will be directed to the chair of the hearing rather than to the individual directly. Questions of whether potential information will be received and asked shall be at the discretion of the chair and/or hearing advisor. This method is used to preserve the educational tone of the hearing and to avoid creation of an adversarial environment.
- ☐ Request modifications of the hearing structure. Modifications request may include a partition panel during the hearing so as not to directly view the complainant/respondent, or the use of technology, such as a phone or Skype.
- ☐ To request an accommodation in accordance with American Disabilities Amendment Act (ADAAA), refer to the "Accommodations for Students with Disabilities" as outlined in the Code of Community Responsibility (Part III.H.). Request for modifications or to receive an accommodation must be made 48 hours prior to the start of the hearing.[A student requesting an accommodation to any portion of the student conduct process to include but not limited to,

the investigation, prehearing meetings, hearing, follow up meetings etc. must follow the appropriate process for requesting an accommodation through the college's Access Resources Department. The department member from the Access Resources that approves any such request will need to notify the appropriate department member the student is working with the student that the accommodation has been reviewed, approved and shall be followed.]

- ☐ Challenge participation of a specific hearing officer or board member in the event a conflict of interest is present. This challenge must be made prior to start of the hearing. Refer to Part VII.M. "2" for complete policy on Conflict of Interest.
- ☐ Present a personal or community impact statement specific to the incident and/or allegations to the hearing forum or hearing officer. A community impact statement is an account in the student's own words of the *effect* of the incident. The student may, for example, have suffered a physical injury, be affected psychologically, or be at a loss financially. A community impact statement is **not** a character statement. Character statements will not be permitted during the hearing.
- ☐ Have a support person during all phases of the conduct process. The individual should select a support person whose schedule allows attendance at the scheduled date and time of any meeting and/or hearing because delays will more than likely not be allowed due to the scheduling conflicts of a support person. Refer to the *support person* Part VII.B. "8" for more information.
- ☐ Remain silent at the hearing. In the event a respondent or complainant chooses to remain silent, it should be noted that the hearing officer or hearing board will proceed with the hearing and make a determination of the case based on any and all information that is present at the time of the hearing.
- ☐ In cases involving the Sexual Misconduct Policy and Procedures, complainant(s) will be afforded the same opportunity to submit and appeal as a respondent. \*\*Please refer to the *Appeals* portion of **Appendix C** in the college's Sexual Misconduct Policies and Procedure for the policies and procedures for submitting an appeal.
- ☐ Though Colby-Sawyer College supports the laws of the land, the college does not desire to function in place of the state or federal law enforcement or judicial systems. This is true in part because the college is staffed to educate rather than to adjudicate; and, because the expertise and certification to detect, prosecute, defend, and enforce are not claimed as a primary competency. Based on this, during a Colby-Sawyer College Sexual Misconduct Administrative Hearing, the technical rules of evidence applicable to civil and criminal cases shall not apply. Decisions are based on the "more likely than not".



## Appendix C: Complainant and Respondent Appeal Process for Sexual Misconduct Administrative Hearing Process

**Appeal process:** The purpose of the appeal process is to ensure that all complainant and respondents are treated fairly throughout Colby-Sawyer College's Sexual Misconduct hearing process. For cases specific to Sexual Misconduct Policy and Procedures, both the respondent(s) and complainant(s) may file an appeal in accordance with this policy and process. For prohibited conduct and definitions specific to the Sexual Misconduct Policy and Procedures, please refer to the **Sexual Misconduct Policies and Procedures**.

1. A respondent and/or complainant (if applicable) who has participated in the hearing process may file an appeal that demonstrates appropriate basis for an appeal that is based on the Sexual Misconduct hearing process. All appeals must be completed and submitted by the respondent and/or complainant (if applicable) involved in the hearing process and also participated in the hearing process. Appeals submitted by any person other than the student who is appealing, such as a support person and/or some other representative, will not be reviewed and will be automatically denied.
2. All appeals must demonstrate one or more of the following criteria and the appellant must explain in detail each basis of appeal:
  - a. new information that was not available and/or known at the time of the hearing, which would likely have had a significant effect on the outcome of the hearing. This new information will be considered only if it is clear that the evidence could not have been known by the respondent or complainant (if applicable) at the time of the original hearing;
  - b. procedural error, in that the hearing was not conducted in accordance with the procedures prescribed by the Colby-Sawyer College's Sexual Misconduct Policies and Procedures and the procedural error must have impaired a complainants (if applicable) or respondents right to a fair hearing; and/or
  - c. the severity of the sanction is not appropriate for the violation(s), and the student's or employee's past conduct history (if applicable).

Information that **is not considered sufficient criteria for an appeal or a reasonable claim of an appeal**, by way of illustration, but not limitation, includes:

- a. disagreement with the finding and/or sanction of a hearing forum;
  - b. failure to appear at an appropriately scheduled hearing; and/or
  - c. failure to comply with a sanction.
3. For an appeal specific to a Sexual Misconduct Administrative Hearings Boards, all appeals will be reviewed by an Appellate Board that is comprised of at least three (3) Faculty/Staff members who were not original participants of the board or hearing. All members of the Appellate Board or department member of Citizenship Education have been trained in the Code, Hearing process, Title IX, and are actively involved in the hearing process as a Sexual Misconduct Administrative Hearing Board Member, and/or hearing officer. In some cases, the vice president for student development and dean of students and/or his/her designee may direct a department member from Citizenship Education to review the appeal individually without a board. If this occurs, the department member of Citizenship Education selected to review the

appeal will be a department member that did not serve as the hearing officer for a one on one hearing or serve as the hearing board's advisor assigned to the original case/hearing.

4. The record on appeal is limited to a review of the written appeal document submitted by the appellant(s), the written record of the incident in question, any other documentation or information gathered at the hearing, an interview with the original hearing officer or the advisor of the hearing board, and any alleged "new information" in an appeal based, in whole or in part, or a claim of "new information," as described above.
5. The appeal review meeting is considered closed unless the Appellate Board or designated department member from Citizenship Education reviewing the appeal requests the respondent and/or complainant (if applicable) to attend the appeal review meeting to explain any possible "new information". The decision to request the respondent and/or complainant (if applicable) to attend is at the discretion of the Appeal Board advisor and/or the Appeal Boards or designated department member of Citizenship Education who is reviewing the appeal.
6. If the appeal is granted, the respondent and complainant (if applicable) will receive written notification from the appeal board hearing advisor or department member of Citizenship Education who conducted the review that the appeal was accepted. This notification will be generally made 5-10 business days from the date of the decision. The Appellate Board or the designated department member from Citizenship Education who reviews the appeal can take one of the following actions:
  - a. If the appeal is granted based on the appropriateness of the sanction(s) issued, the matter will be referred to the Sexual Misconduct Administrative Hearing Board, which originally heard the case to allow reconsideration of the original determination and/or sanction(s). In these instances a complete review of the student(s)/employee(s) conduct history, including previous sanction(s), will take place.
  - b. If the appeal is based on new information that was not available at the time of the hearing the matter will be referred to the Sexual Misconduct Administrative Hearing Board, which originally heard the case to allow for consideration of the new information.
  - c. If the appeal indicates procedural error, the matter will be referred to a new hearing Sexual Misconduct Administrative Hearing Board, to allow for reconsideration of the results of the original finding(s).
7. If the appeal is not granted, the respondent and complainant (if applicable) will receive written notification from the advisor of the board that the appeal has been denied. In the event an appeal is denied the decision made by the Sexual Misconduct hearing board or the department member of Citizenship Education who reviewed the appeal and sanction(s) assigned will remain in effect. This notification will generally happen within 5-10 business days from the decision of the appeal review.

In cases involving Sexual Misconduct Policy and Procedures, complainant(s) will be notified of the findings of the respondent(s).

The decision of an Appellate Board or the department member of Citizenship Education who reviewed the appeal cannot be appealed.

Sanctions are effective as of the date of the letter advising the respondent or complainant (if applicable) of the finding of responsibility and sanction. All appeals must be submitted five (5) days from the written delivery date of the findings letter.

**8. Instructions for submitting an appeal:**

- a. The respondent or complainant who wishes to appeal must contact the Department of Citizenship Education by email indicating an intent to appeal, you will then be sent instructions on how to properly appeal and be provided with the “Electronic Appeal Form” as an attachment to the email (**This is not an appeal, this is only requesting instructions on how to properly appeal**).
- b. An appeal of a finding and/or sanction imposed by a Sexual Misconduct Administrative Hearing Board must be completed on the “Electronic Appeal Form”.
- c. Once the respondent or complainant (if applicable) receives the instructions and the “Electronic Appeal Form” and has reviewed the Appeal Process outlined in this document, the completed “Electronic Appeal Form” must be submitted within five (5) days of written delivery of the decision of the hearing forum via email to the appeals email address: [studentconduct@colby-sawyer.edu](mailto:studentconduct@colby-sawyer.edu) where it will be forwarded and reviewed by an Appellate Board or by a designated department member for Citizenship Education.