Proposed Changes to Columbia’s Gender-Based Misconduct Policy

1. Change the definition of consent to adopt a more comprehensive and practical standard, and incorporate additional scenarios and examples of sexual violence in order to reflect the full range of experiences that fall into the category of sexual violence.
2. Reorganize the policy, placing definitions first, with the definition of “consent” first in that category. Follow the definitions section with policy and scenarios. This will help establish a common vocabulary and set of behavioral expectations before outlining the possible consequences of violating those expectations. Under “Resources,” incorporate the additional resources we’ve listed.
3. Practice meaningful transparency and accountability.
4. Ensure adequate training of officers under the Office of Gender-Based Misconduct to improve student experiences with reporting and reflect the seriousness of sexual and domestic violence on this campus.
5. Incorporate an effective Amnesty Policy regarding the use of drugs and alcohol.
6. Give students involved in adjudication processes adequate information and decision-making power regarding the investigative report, personnel involved in their case, and legal/emotional support options.
7. Allow additional allegations against the same respondent (including past and concurrently open allegations) as evidence during a university hearing.
8. Create a formal accommodations and support system for complainants through case management, and implement effective no-contact directives which require perpetrators of violence to leave campus spaces or events if the survivor is present.
9. Treat cases of sexual and domestic violence with appropriately severe sanctions, including expulsion when called for by the complainant, and educational measures for all students found responsible. If respondents found responsible return to campus, they must be prohibited from holding positions of power, including but not limited to resident advisors, teaching assistants, and orientation leaders, and case management.
1. **Change the definition of consent provided on page 20 of the Office of Gender-Based Misconduct’s policy to adopt the one we have provided, and incorporate additional scenarios and examples of sexual violence in order to reflect the full range of experiences that fall into the category of sexual violence.**

1.1. Define consent as: Affirmative, conscious, enthusiastic, continuous, revocable, sober, freely-given and voluntary agreement to engage in sexual activity.

1.1.1. It is the responsibility of each person involved in sexual activity to ensure that they have the affirmative consent of the other(s) to engage in said sexual activity.

1.1.2. Lack of protest or resistance does not mean consent. Silence does not mean consent.

1.1.3. Consent must be ongoing throughout a sexual activity and can be revoked at any time.

1.1.4. Consent to one form of sexual activity does not imply consent to other forms of sexual activity.

1.1.5. The existence of a dating relationship or prior sexual history between the persons involved should never be an assumed indicator of consent.

1.1.6. Consent cannot be procured by the use of coercion, manipulation, physical force, compulsion, threats, or intimidating behavior.

1.1.7. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

1.1.8. Someone intoxicated by drugs or alcohol, unconscious, disabled, or otherwise made helpless and therefore incapable of understanding the fact, nature, or extent of the sexual activity cannot consent. Concerning involvement of drugs or alcohol:

1.1.8.1. The use of alcohol or drugs does not justify or excuse behavior that constitutes gender-based misconduct.

1.1.8.2. The use of alcohol or other drugs never makes someone at fault for experiencing gender-based misconduct. Though alcohol consumption and sexual assault often occur together, alcohol is not the cause of sexual assault. Alcohol is used as a tool of coercion and camouflage to perpetuate sexual assault.

1.2. The current definition of Gender-Based Harassment states that harassment is unacceptable when it “unreasonably interferes” with someone’s life. Any harassment that interferes with someone’s physical, mental, or emotional well being is unreasonable. The policy’s definition must be revised to reflect this.

1.3. Add additional scenarios, including:
1.3.1. One explicitly queer scenario.
1.3.2. One involving Domestic or Dating Violence and/or sexual coercion in the context of an intimate relationship.
1.3.3. One showing a breach of affirmative consent, demonstrating that silence does not mean yes.

1.4. Include stalking as an example of sexual harassment.

2. Reorganize the policy, placing definitions first, with the definition of “consent” first in that category. Follow the definitions section with policy and scenarios. This will help establish a common vocabulary and set of behavioral expectations before outlining the possible consequences of violating those expectations. Under “Resources,” incorporate the additional resources we’ve listed.

2.1. Explicitly state the resources available at St. Luke’s, including trained advocates, rape kits, STI testing and emergency contraception, and support groups.

2.2. Include the business hours of each on- and off-campus resource.

2.3. Under “Resources for Students” and in the “Confidentiality Protections and Reporting Obligations” chart, clarify the confidentiality clause. Make clear that a survivor and their supporters can seek support from friends, family, and other survivors (including other current students) during the course of the adjudication process without fear of discipline. This is important to clarify, because in the past, students have been restricted from discussing their experiences with any other current students during the disciplinary proceedings. Some have even been formally sanctioned for doing so.

3. Practice meaningful transparency and accountability.

3.1. Provide the student body with timely warnings regarding reported acts of on-campus sexual violence. Students have a right to know when such incidents take place, as respondents pose an ongoing threat to the community while they remain on campus during their adjudication and beyond. Given rates of serial perpetration and violence between acquaintances and intimate partners, the administration and complainant’s awareness of the incident and the perpetrator’s identity in no way ensures the safety of students. These alerts are mandated by the Jeanne Clery Act, which states that universities “shall make timely reports to the campus community on crimes considered to be a threat to other students and employees… such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences” (20 U.S.C. § 1092(f)(3)) The alerts are already sent out for reported off-campus assaults, but not on-campus cases. They should not contain identifying information regarding the complainant.

3.2. Institute a mandatory and comprehensive review of the Gender-Based Misconduct Policy every two years which directly solicits and integrates the concerns of students and survivors on campus.

3.3. Create an online evaluation form for every student who makes a formal report. Every complainant and respondent in a gender-based misconduct case must fill this form out after their case with the Office of Gender-Based Misconduct is completed, and the
results of the evaluation must be sent to PACSA (not just a select group of administrators.

3.4. Uphold students’ right to fully protected financial aid packages and full reimbursement for any lost tuition should they need to withdraw or take a temporary leave of absence because of their experiences of sexual or domestic violence, as mandated by federal guidance.

3.5. The OGBM must make the following information accessible to respondents and complainants:

3.5.1. The names and training/qualifications of all investigators, hearing panelists, case managers, sanctioning and appeals officers, volunteer attorneys, and any other persons of influence within their case case. Students are entitled to know how each of these people has been trained by the Office of Gender Based Misconduct. Currently, students have no idea who is involved in their cases and many have had disturbing interactions with investigators, hearing panelists, sanctioning and appeals officers, and other University representatives that reveal an unacceptable lack of training and sensitivity.

3.5.2. Names of witnesses in the case. Students must receive a written explanation from investigators if they are unable or unwilling to contact certain witnesses before the hearing.

3.5.3. The investigator’s assessments of credibility for each party in a case. Given the highly subjective nature of the investigator’s evaluation of credibility, and the influence it has over the panel’s ultimate decision, students should have a right to more than one investigator contributing to their evaluation of credibility and the right to challenge that evaluation.

3.5.4. Resolution within 60 days of the process. Strict parameters dictating the legitimacy of delays must be created in order to protect this right. The Office of Gender­based Misconduct must establish some mechanism by which students can report and challenge violations of this right. Many survivors have watched their cases stretch on for months with no resolution despite the policy’s goal of 60 day hearings, and this has added hours of additional anxiety and trauma for students navigating the process. For example, one survivor was forced to remain in NYC over the summer instead of returning home because her case stretched on for 5 months.

4. **Ensure adequate training of officers under the Office of Gender-Based Misconduct to ensure effectiveness, sensitivity, and reflect the seriousness of sexual and domestic violence on this campus.**

4.1. Remove deans from decision making roles as sanctioning and appeals officers.

4.1.1. Deans have no expertise in dynamics of sexual or dating violence prevention or response, and are completely unqualified to make decisions about sanctioning and appeals in these cases. It takes years of professionalized training—not 2 hours—to understand the complexities of gender-based violence and its impacts. Furthermore, their competing responsibilities for fundraising, alumni relations,
student activities, and the public image of the school create a conflict of interest that the most well-intentioned administrator would struggle with. Both victims and accused students deserve to have decisions of this seriousness made competent and impartial individuals.

4.1.2. Deans have demonstrated the structural impossibility of the current system by regularly handing down 1 and 2 semester suspensions for students found responsible for rape, despite their repeated promises to respond with appropriate gravity. This is not about a negative judgment of the deans’ character but about their structural inability to be unbiased and their lack of expertise in the area of responding to and preventing sexual violence.

5. **Incorporate an Amnesty Policy regarding the use of drugs and alcohol.**

5.1. The University should explicitly guarantee complete amnesty for the use of alcohol or illegal substances for any student who discloses that use in good faith to the Office of Gender-Based Misconduct during a complaint or investigation. Complainants should not have to fear reporting to the Office of Gender-Based Misconduct because the University might pursue disciplinary action against a complainant or witness’s use of alcohol or drugs. This is commonly understood as a best-practice and similar policies are already in place at most other peer institutions.

6. **Give students involved in adjudication processes adequate information and decision-making power regarding the entire process including the investigative report, personnel involved in their case, and legal/emotional support.**

6.1. The Office of Gender-Based Misconduct has the obligation to ensure that all complainants and respondents’ rights are made clear in writing from the beginning of the process and upheld throughout. These rights include the right to:

6.1.1. Be informed as to who specifically may review their report/statements in each step of the adjudication process as per the policy.

6.1.2. Have a clear procedure through which they can make changes to the investigative report, and which details whether changes will be made to the content of the report or added on to the end as an addendum.

6.1.3. Provide questions for witnesses to be asked during the hearing.

6.1.4. Refrain from making self-incriminating statements in accordance with their 5th Amendment rights.

6.1.5. When a student is found responsible, the survivor should be given the opportunity to make an impact statement during the point of the adjudication process when the decision maker is deliberating on appropriate sanctions, to explain what sanctions they feel would best ensure their mental well-being and prevent continued harassment, violence, or trauma.

6.1.6. Review their investigative report outside the Office of Gender-Based Misconduct to ensure they have sufficient time to prepare their statements with legal counsel as appropriate. Currently, complainants and respondents are only sometimes provided with a copy of the investigative report but other times are
only allowed to review it inside the office. Using the university’s letter sending process via uni sign in, for the duration of the case, would be an apt way to accomplish this.

6.1.7. Bring an attorney or legal advisor in addition to a personal support person during the hearing process. Survivors have expressed frustration that they have to choose between professional legal support and emotional support.

6.2. Restorative and/or transformative justice processes should be made available when both parties consent to participate.

6.2.1. Columbia must partner with an organization specializing in restorative and/or transformative justice develop this option, and should include a thorough description of the available restorative and/or transformative justice processes in the policy and the explanation of rights distributed at the beginning of the process.

6.3. Students who obstruct justice throughout the investigation and/or adjudication processes must face punitive treatment. Complainants and respondents should be provided with an option to file a complaint of obstruction of justice if they feel the other party in their case has engaged in such behavior, and this should be considered in the hearing, sanctioning, and appeals decisions. For example, a survivor should have been able to report her accused rapist who attempted to bribe a mutual friend to act as a favorable witness.

6.3.1. Obstruction of justice includes (but is not limited to) the manipulation and destruction of evidence as well as the intentional delaying of procedures throughout the adjudication process, and, obviously, falsifying details in testimony.

6.4. In appeals proceedings:

6.4.1.1. The University should not require complainants and respondents to re-appear before the hearing panel or the investigative officers during the appeals process. However, complainants and respondents should have a right to re-appear before the hearing panel or the investigative officers if they so choose. This will help ensure that both sides of any case are accurately and equitably portrayed in any appeals proceedings.

6.4.1.2. If the Appeals Officer decides to convene a new hearing panel for the appeal, rather than re-convening the original panel, they must provide an explanation in writing for why this decisions was made. Either party should have the right to challenge this decision if they feel it was made unfairly.

6.4.1.3. Deans should not be given jurisdiction over the appeals process. Given that an appeal is the final and most serious challenge a student can make in this process, the person tasked with determining the validity of these appeals should be exceptionally well qualified, clearly impartial, and have real professional expertise in gender-based misconduct issues. For example, Dean Valentini taught Chemistry before moving up the Columbia hierarchy through various administrative roles. This does not
qualify him to be the final arbiter in serious cases of gender-based violence. Deans lack the professional expertise to hold a role that gives them the authority to unilaterally decide these cases. Further, their competing responsibilities as Deans may complicate their ability to serve as impartial decision-makers in this role. In at least 5 cases in the last year, survivors have felt that Deans made unfair, biased, or uninformed decisions in the appeal process that negatively affected the outcome of their case and caused them extremely distress.

7. **Allow all allegations against the same respondent (including past and concurrently open allegations) as evidence during a university hearing.**

   7.1. All formal reports of violence or gender-based misconduct made against a given respondent, and all witness testimony regarding the respondent engaging in violence or gender-based misconduct that has not resulted in a formal report, should be considered in the hearing, sanctioning, and appeals processes. Such information is crucial evidence to indicate a potential pattern of behavior. It is standard procedure in the criminal justice system to allow open police reports to be considered, regardless of whether the report has resulted in a conviction. The University has allowed serial perpetrators to remain on campus by refusing to consider cases open concurrently against the same respondent.

   7.1.1. This must apply to any concurrent cases against the same respondent, and include evidence of a respondent’s history of violent acts beyond gender-based misconduct including, but not limited to, criminal and university disciplinary records.

   7.1.2. This has been a major issue for survivors who attempt to report serial perpetrators; especially given the typical length of these investigations and cases, it’s imperative that open cases can be considered concurrently in order to identify serial perpetrators and treat repeat offenders with appropriate severity.

8. **Create a formal accommodations and support system for complainants through case management.**

   8.1. The University must stipulate in no contact directives that if the complainant and respondent observe each other in a public place, it is the responsibility of the respondent to leave the area immediately and without engaging with the complainant. This should apply to all public spaces and any events sponsored by the University or any University programs, offices, departments, teams, or recognized student groups.

   8.2. The OGBM must implement a formal accommodations request system through which survivors are able to request interim measures and accommodations. Currently, survivors can request these measures from their cases managers but these can be rejected or ignored with no formal explanation. Survivors are entitled to these measures by law; yet many survivors have had these requests denied without explanation. For example, one survivor was not permitted to withdraw from a class though they suffered severe panic attacks because of their PTSD and were not able to participate fully.
Another survivor requested that her abuser be blocked from accessing her dorm, but was told the OGBM would not restrict his access because he “should be able to see his friends.”

8.2.1. Many student survivors do not want to begin the traumatic process of filing a formal complaint with the University, but may still need housing and academic accommodations. The University must clearly and explicitly create a process for requesting accommodations without automatically starting a formal adjudication process.

8.2.2. This formal requests system must explicitly offer and provide the ability to request post-hearing accommodations (such as academic or housing changes) even if the respondent is not found responsible.

8.2.3. It must include a specific time frame within which each request must be assessed and responded to.

8.2.4. It must require a written explanation regarding the approval or denial of any request.

8.3. The University must establish a way to seriously enforce access restrictions, as the current procedure is ineffective and leaves students unsafe. As the current policy allows, a respondent or perpetrator may have their swipe access to a building revoked; however, another person can still sign that person into the very location from which that person is prohibited from entering. It is imperative that the OGBM collaborate with Housing and Public Safety to create a viable protocol in residence halls that more effectively prevents these restrictions from being broken. Because our current sign-in system fails to prevent this, survivors have to live in constant anxiety that the person who assaulted, abused, or stalked them might enter their building at any time, which is unsafe and unacceptable.

8.3.1. In addition to swipe access being revoked, the system should prevent respondents/perpetrators from getting signed in by other students. Violations of this should be treated with serious disciplinary action for both the student who violates the order, and any other student who aids the student in gaining access to a prohibited building.

8.4. The OGBM should create a protocol for a situation in which a respondent and complainant want to take the same class, whether the respondent is found responsible or not. This should be implemented proactively rather than waiting for survivors to attend class and realize they are both enrolled, and should continue until the complainant graduates.

8.4.1. As per guidelines from the Department of Education on Title IX implementation, the burden of any accommodations or interim measures should not fall on the survivor or complainant (i.e. if the two parties share a class, the respondent should be removed from the class rather than the survivor).

8.5. As per guidelines from the Department of Education on Title IX implementation, any costs incurred by the complainant in securing accommodations must be covered by the University, and this should be guaranteed in the policy. For example, if a student survivor cannot remain in their dorm for safety reasons, the school must either provide
suitable housing on campus for free, including covering any additional costs if a student is moved into a more expensive dorm, or cover the expenses related to renting a hotel room. A student who needs supplemental tutoring because their PTSD prevented them from focusing in class should be provided tutoring at no cost. A student should not be charged for having experienced gender-based violence.

8.6. Complainants and Respondents must be notified in advance if the Office of Gender Based Misconduct is contacting academic, athletic, and extracurricular departments to share information regarding their case.

9. Treat cases of sexual and domestic violence with appropriately severe sanctions, including expulsion when called for by the complainant, educational measures, and case management if respondents found responsible return to campus.

9.1. If a student is found responsible for committing gender-based violence and sanctioned with suspension, the minimum duration for suspension should be the remainder of the time that the survivor will be a student at the college. This will ensure that survivors are able to pursue their education without having to live in constant fear of seeing their rapist or abuser. Additional requirements to suspensions must include meaningful educational programming and mandatory follow-up with Case Managers upon the suspended student’s return to campus.

9.1.1. If students found responsible of gender-based misconduct are allowed back on campus they must be prohibited from leadership roles where they would have power over other students, including, but limited to, resident advisors, teaching assistants and orientation leaders. There is currently no policy prohibiting this and that is unacceptable. Currently, the University allows those found responsible of Gender-Based Misconduct to hold leadership positions on campus as Resident Advisors, Teaching Assistants, and Orientation Leaders. This is unacceptable. Research indicates that ninety percent of perpetrators of gender-based violence are serial perpetrators. Allowing people found responsible of gender-based misconduct to supervise the physical, emotional, and academic well-being of students jeopardizes student safety. This is especially relevant in the case of first years, who are the most vulnerable to sexual violence and who look up to RAs and TAs for guidance. This is a simple matter of student safety, as most acts of sexual violence are committed by serial perpetrators and the positions of RA and TA put perpetrators in a position where they hold power and influence over younger and more vulnerable students and can easily abuse this trust. Given that RAs, TAs, and orientation leaders tend to have the most one-on-one contact with first years, who are already statistically the most vulnerable to sexual assault on campus, it is unsafe for people found responsible of Gender-Based Misconduct to hold these positions.

9.2. If a student is found responsible for committing sexual assault, the available sanctions shall be either expulsion or immediate suspension.
9.3. “Prior to imposing any sanction, a Sanctioning Officer will consult with the Gender-Based Misconduct Office about sanctions imposed in similar cases.” (OGBM Policy, 16)

9.3.1. Given the egregiously inappropriate and weak nature of previous sanctions imposed by the University, the University should not impose sanctions based on the precedent established by similar cases. One semester suspensions are not an appropriately severe sanction for sexual assault or dating violence. Instead, sanctions should reflect an approach which acknowledges the grave significance of such violence. In its response to perpetrators, the University should recognize that measures such as comprehensive re-education and/or expulsion are necessary to prevent perpetrators from posing continued threats to the campus community and society at large.

9.4. “The University will require any student determined to be responsible for a violation of the Policy to receive appropriate education and/or training related to the gender-based misconduct violation at issue.” (OGBM Policy, 17)

9.4.1. All perpetrators should receive a thorough, meaningful, and evidence-based education surrounding the perpetration of gender-based misconduct to help prevent future violence. However, the current educational requirements are inadequate in addressing the severity of gender-based misconduct. Currently, Columbia assigns reflective essays as a punishment for sexual assault in some cases. Essays are not a meaningful method of education in this context. Appropriate educational programs must be comprehensive, administered by trained professionals with experience in sexual violence prevention, and informed by available research on best-practices for prevention programming.

9.4.1.1. General information regarding the content and structure of these re-education options should be clearly explained and publicly available.

9.4.1.2. The administrators or departments responsible for overseeing the education and training component of sanctioning should be identified in the policy.

9.4.1.3. The University must revise its interpretation of the “responsible employee” clause of Title IX, and cease requiring professors and RAs to be mandatory reporters of sexual and domestic violence. By currently embracing a maximal interpretation of this clause, the university further alienates survivors by depriving them of support from their peers and trusted adults in their lives. Additionally, if students need to request accommodations from professors because they are experiencing trauma, they should be able to do so without having their experiences reported to OGBM.

9.5. Community service is not a sufficient sanction for perpetrators of sexual violence, though it can be an appropriate and helpful component of sanctions when combined with more rigorous requirements.

9.6. Publish a list of sanctioning officers and appeals officers and the training they have received.
9.7. To ensure transparent and legitimate sanctioning processes, the Office must include in its annual publication an aggregate, anonymized report of the sanctions imposed on students found “responsible” for committing gender-based violence on campus. This should include all the cases which were concluded in the given academic year (not simply all the cases which were reported in that year). This approach is already followed by peer institutions like Yale and the University of Connecticut.

9.8. “The respondent’s conduct during the disciplinary process.” (OGBM Policy, 7)

9.8.1. Other than attempts made by the respondent to obstruct justice, conduct of the respondent during the disciplinary process should not influence sanctioning. A student can be well-mannered during an investigation process and still have committed an act of serious violence.