

University Sexual Misconduct Policy	Effective date: September 30, 2014
To be posted openly	Position responsible for coordinating compliance: Dean of Students, with assistance by the Title IX Coordinator, General Counsel, and others as needed.

PURPOSE

To provide a single, easily accessible and user-friendly document for students, employees, and community members to find information regarding Niagara University's rules and procedures regarding sexual misconduct.

For purpose of this policy, "sexual misconduct" includes but is not limited to sexual harassment, sexual assault, dating violence, domestic violence, and stalking. Definitions of each of these behaviors can be found at the end of this policy. If you have questions regarding what constitutes "sexual misconduct," you may call the Title IX Coordinator, the Dean of Students, the Director of Campus Safety, or the General Counsel.

SCOPE

As advised by the federal guidance at <https://www.notalone.gov/schools/>, this policy covers every department within the institution.

SUMMARY

In the case of a medical emergency, call 911, or contact Campus Safety at (716) 286-8111.

If you are a student and experience sexual misconduct, you may report it to a member of the residence life staff, the Dean of Students, the Title IX Coordinator, Campus Safety, or any university employee. Your report will be addressed per the procedures below; **THIS INCLUDES THE OPTION—BUT NOT THE REQUIREMENT—THAT YOU REPORT THE MATTER TO LAW ENFORCEMENT.** Please know that students may be entitled to interim measures, including but not limited to, re-arranged living arrangements and class times to limit interactions with a reported abuser.

If you are a trustee, officer, employee, contractor, or guest of Niagara University and experience sexual misconduct, you may you may report it to your supervisor, the Director of Human Resources, the Title IX Coordinator, Campus Safety, or the General Counsel. Your report will be addressed per the procedure below; **THIS INCLUDES THE OPTION—BUT NOT THE REQUIREMENT—THAT YOU REPORT THE MATTER TO LAW ENFORCEMENT.**

All trustees, officers, and employees are required to inform the Title IX Coordinator and the Director of Campus Safety regarding allegations of sexual misconduct. Reports will be directed per the procedure below.

IMMEDIATE ASSISTANCE AFTER SEXUAL ASSAULT OR INCIDENT

Students and others who experience sexual violence are encouraged to report it immediately, but more importantly, to seek treatment at a hospital equipped to perform the appropriate exams when the victim has reported that they have been sexually assaulted or raped. **It is important to preserve evidence for proof of a criminal offense if such charges may be filed; we know it is difficult, but if at all possible, do not shower or otherwise remove evidence of a sexual assault prior to seeking medical attention.** Students may contact a member of the residence life staff or Campus Safety for assistance in seeking medical assistance. They may also contact the following off campus resources:

Rape Crisis Services of Niagara County
716.285.3518

Lockport Memorial Hospital
521 East Street
Lockport, NY 14094
716.514.5527

Niagara Falls Memorial Medical Center
621 Tenth Street
Niagara Falls, NY 14302
716.278.4000

Mt. Saint Mary's Hospital
5300 Military Road
Lewiston, New York 14092
716.297.4800

Erie County Medical Center
462 Grider Street
Buffalo, NY 14215
716.898.3000

Women & Children's Hospital
219 Bryant Street
Buffalo, NY 14222
716.878.7330

POLICY: NIAGARA UNIVERSITY IS COMMITTED TO ADDRESSING SEXUAL MISCONDUCT

As a Catholic institution, founded by the Vincentians, Niagara University expects all its members to respect the rights, dignity, and personhood of others. Niagara University strives to create a safe educational and working environment for all members of the community including students, faculty, administrators and staff. Sexual misconduct of any kind, including discrimination, sexual assault, dating violence, domestic violence, and stalking, will not be tolerated.

Niagara University fully supports and complies with all local, state and federal laws governing rape, sexual and dating violence, and stalking.

This Policy applies to both undergraduate and graduate students, and to behavior that occurs both on and off campus. It is the responsibility of all students to be aware of and adhere to all state and federal laws, particularly those which govern rape, sexual and dating violence, and stalking, and to also be aware that behavior that does not rise to the level of being criminal is also actionable under this policy.

In addition to this policy, Students are also protected by the University's Harassment Policy (A-06) and the policy on Non-Discrimination (A-11) located on the policy database (policies.niagara.edu), as are faculty and staff. Violations of Niagara University's sexual misconduct, harassment, and non-discrimination policies are serious and although there are no standard sanctions for students outlined for violations of these policies, suspension and/or expulsion from the University are possible.

STUDENTS: COUNSELING, ADVOCACY, AND SUPPORT—ON AND OFF CAMPUS

The University encourages students to understand the considerations governing sexual contact (including intercourse) between persons. Counseling Services employs qualified professionals who can help students clarify their feelings about relationships, intimacy, sexual orientation and gender identity and help students develop assertiveness skills that may be useful in managing potentially difficult situations. Counseling Services staff provides direct service and referrals for survivors of sexual violence. Educational programs about healthy relationships and sexual violence are offered in the residence halls and on campus throughout the academic year.

If you believe that you have been victim of sexual assault, harassment, stalking or dating violence on University property, an off-campus location, electronically, at a University-sponsored event, or by a member of the University community, you are encouraged to report the incident. Alcohol and other drugs are not an excuse for someone to engage in behaviors that violate the rights of another, and victims who may have been under the influence are still encouraged to come forward with reports. The focus in matters of sexual misconduct is always on the reported behavior, not on whether someone was using alcohol or other drugs at the time. Behaviors that violate the university's alcohol or drug policy may be addressed outside of this policy.

NU conducts routine training for students, including bystander intervention and programs to educate students about the school's sexual misconduct policy. This training is arranged through the Dean of Students Office.

Employees: Reporting of Incidents Required

As required by the Clery Act, all supervisors and officials who have significant responsibility for student and campus activities such as coaches, administrators, and faculty (“responsible employees”), must report crimes involving sexual abuse. Further, Niagara University believes that all employees have a responsibility to report incidents of sexual harassment and other forms of sexual misconduct. Reports of sexual misconduct can be made to any of the Title IX Coordinators listed below. Reports can also be made to Campus Safety at 716-286-8111, or to the General Counsel. . Reports can also be made via the Whistleblowing policy, which can be found at policies.niagara.edu.

Responsible employees and other reporters will be asked to provide an initial statement of what occurred. It is important to give as much information as possible as statements will serve as the basis for further investigation of any case and any resulting campus student conduct charges.

Title IX Coordinator – Christopher Sheffield, Executive Director for University Planning and Assessment (O’Shea B-27, x.8425)

Deputy Title IX Coordinator – Carrie McLaughlin, Dean of Students (Gallagher 111, x.8405)

Deputy Title IX Coordinator – Rita Geiben, Employment & Employee Relations Manager (Human Resources, x.8691)

STUDENTS: IF YOU WANT THE REPORT TO REMAIN CONFIDENTIAL

Victims of sexual misconduct, who want the information to remain confidential, may seek out a counselor or psychologist in Counseling Services, staff in Health Services, or an ordained member of Campus Ministry. In addition, students in the ROTC program can report confidentially to the SARC (Sexual Assault Response Coordinator) representative within the Purple Eagle Battalion Cadre. Reports made to a licensed counselor or health care provider, a Vincentian Priest during confession, or to the SARC representative, are confidential and will not be reported for investigation without your permission unless an imminent threat exists. Counseling Services can also provide assistance to students who wish to find counseling support off campus. The university encourages any student who has been sexually assaulted to also consult their parents/guardians.

STUDENTS: ACADEMIC ACCOMODATIONS AND INTERIM MEASURES

When a student reports being a victim of sexual misconduct, interim measures may be put in place to protect all parties and minimize the burden on the victim. This includes, but is not limited to, relocating students into alternative classes, room assignments, or work schedules/situations; providing academic support including assistance with course withdrawals or leave of absences; issuing of no-contact orders*; and providing

transportation assistance around campus. Support for international students can also be provided regarding their visa/immigration status. Interim measures will remain in place for an indefinite period of time or until the investigative and/or disciplinary process has ended.

*No-contact orders issued by the university are limited in scope and authority to students and behaviors that violate the Student Code of Conduct. If a victim wishes to obtain a civil order of protection, the Director of Campus Safety can assist them in contacting appropriate local law enforcement.

COMMITMENT TO NO RETALIATION

Any person, who in good faith reports a violation of this policy, brings forward a complaint, or who participates in an investigation related to a sexual misconduct violation is protected against any type of retaliation that occurs directly or indirectly or through third party. Reports of retaliation should be reported to a Title IX Coordinator or the Dean of Students Office immediately.

Examples of “retaliation” include a threat to lower a grade, threats via text messages that the complainant or witness should retract their statement or suffer negative consequences, or loss of employment.

b. Procedures for Investigating and Adjudicating Allegations of Sexual Misconduct

The university will investigate all reports of sexual misconduct.

Reports of employees, contractors, or guests engaging in sexual misconduct will be addressed under the Harassment, Non-discrimination, or Employee Code of Conduct policies.

Reports of students engaging in sexual misconduct will be investigated under either the Student Code of Conduct or, for allegations of sexual misconduct, the procedure below.

INVESTIGATIONS REGARDING SEXUAL MISCONDUCT PERPETRATED BY STUDENTS

Due to the usually private nature of these actions, the university may not be able to pursue charges of sexual misconduct/harassment unless the complainant acts as the accuser and primary witness. However, in cases where there may be a witness to the alleged violation, or in cases where the complainant requests that the University pursues the case even though she/he is unwilling to act as the accuser, or in cases in which pursuing the case is in the best interest of the University, the university reserves the right to pursue a case to its conclusion. The University also has the responsibility, in some cases, to report incidents that may pose a risk to the campus community, without providing identifying information about the victim, as part of a timely warning notice required by Clery.

Upon becoming aware of an allegation of sexual misconduct against a student, the Title IX Coordinator or designee(s) will initiate an investigation and take actions deemed necessary to protect the emotional well-being of the individuals involved, as well as the educational environment of the University community.

Investigations are conducted by trained members of the Title IX team, who, together with all “responsible employees,” receive annual training. This training is arranged by the Title IX Coordinator and is conducted either by the Title IX Coordinator and Deputies, the General Counsel, the Director of Campus Safety, and/or an outside contractor.

In cases where law enforcement is involved, the university will comply with all other investigative efforts and will conduct its own investigation concurrently for purposes of this policy. Unless compelled by subpoena or given the express permission of the complainant, the university will not disclose records protected by FERPA or FERPA-exempt Campus Safety reports; the sole exception to this shall be if there is an imminent threat warranting a timely warning, disclosure to an individual(s) under threat.

The university recognizes the importance of privacy and confidentiality in these matters and will uphold both of all parties involved to the extent practicable. Some individuals filing complaints or involved in an investigation may want their identity to remain confidential. In some instances, the person being questioned can be spoken to without identifying the complainant. In other cases, issues of confidentiality must be balanced against the University’s need to investigate and take appropriate action.

While discretion remains important, parties are not restricted from discussing or sharing information relating to their complaints with others who may support them or assist them in presenting their case.

At the conclusion of an investigation, the investigation team will provide a summary of findings to the Title IX Coordinator who will review the information and, in consultation with the Dean of Students, will offer an administrative resolution to the case that will include sanctions.

If the complainant and accused student(s) agree to the terms of the resolution, including sanctions, they will sign the resolution agreement and may not appeal.

If either the complainant or the accused student(s) do not wish to accept the resolution, the case will go before a hearing panel which will review the same information and determine findings and sanctions. **Mediation will not be used as a means to address or resolve cases of sexual misconduct.**

All hearings involving sexual misconduct allegations will be conducted in accordance with the normal rules and procedures of the student conduct process with special sensitivity to the nature of the charges and the best interest of all parties involved.

All participants are expected to maintain confidentiality regarding the proceedings, except that the complainant and the alleged offender. In recognition of the unique nature of sexual misconduct cases, the procedures specified in this section supersede and conflicting provisions of the university student conduct process. Similarly, pursuit of charges through the University's Student Code of Conduct does not preclude the pursuit of criminal charges or civil complaints.

1. The sexual misconduct hearing panel shall be appointed and chaired by the Dean of Students or his/her designee and shall consist of three faculty or administrators trained in sexual misconduct proceedings.
2. Under Title IX, both the alleged offender and complainant have a right to similar and timely access to information that will be used at the hearing. Although hearing materials become part of a charged student's educational record under FERPA, the parties should know that the law allows the University to share relevant case materials with both parties and University personnel.
3. Both the alleged offender and complainant will receive notice of charges at least 48 hours in advance of the hearing.
4. The alleged offender and complainant may each have an Advisor present during the hearing, but the Advisor is not allowed to address the panel or question witnesses. The Advisor must be a full-time member of the University community (faculty, administrator, or staff) and cannot be an attorney or hold a law degree. The Advisor can meet with the student to discuss the student's case prior to the hearing. The Advisor's role is to provide personal counsel and support to the accused, but not to present the case or address the panel, board, or hearing officer. The Advisor cannot serve as a witness in the conduct proceeding. If the student or the Advisor has any questions, they should contact the Dean of Students or his/her designee. Although students are free to select their own Advisor, the Dean of Students shall maintain a list of Advisors familiar with this process and shall assign an Advisor to a student, who the student may elect to use or replace at their discretion.
5. Witnesses may be asked to participate in the hearing. The alleged offender and the complainant each may bring witnesses to the hearing to testify on their behalf. There is no limitation placed on the number of eyewitnesses or corroborating witnesses. In the event that a witness cannot attend a hearing, a written statement signed by the witness and completed in the presences of a campus safety officer or student life staff member may be submitted in a hearing. Students are limited to two character witnesses to testify on their behalf. Character witnesses should be prepared to speak about the character of the student who asked them to testify and may do so in person or in writing.
6. The hearing will begin with the panel chair going over the student rights and responsibilities for the alleged offender, and then reading his/her charges. The alleged offender will have the opportunity to present opening remarks to the panel that describes his/her involvement and/or responsibility in the incident. The complainant will then have an opportunity to present his/her opening remarks to the panel. The complainant may choose to present her/his testimony without the alleged offender being present. Several options exist where the

complainant does not want to be present in the room with the alleged offender. The testimony presented to the panel can be recorded and replayed for the alleged offender to hear before he/she gives any testimony or presents any evidence. The alleged offender can also listen to the testimony by intercom. The complainant has the right to be present for or listen to all testimony given during the hearing, if he/she chooses.

7. The panel will then call witnesses and has the ability to recall the alleged offender and any witnesses, including the complainant for clarification. Cross examination by the alleged offender and complainant will not be permitted.
8. The complainant has the right to enter an impact statement in person or in writing, which describes how the incident has affected him/her. The impact statement, if provided, will be introduced after all of the witnesses have been heard from and after the determination of responsibility is made.
9. Statements or questions regarding the past sexual history of the alleged offender or complainant will generally not be permissible as evidence during the hearing except as they relate to the past sexual history of the alleged offender with the complainant. A prior consensual relationship by itself does not imply consent or preclude a finding of responsibility.
10. The degree of impairment of the complainant's ability to give or withhold consent may be introduced into evidence. **Consent is defined as an affirmative indication of a voluntary agreement to engage in a particular sexual act or conduct in question.** Consent cannot be obtained through the use of force, threat, or intimidation. Consent cannot be given by someone who is not legally qualified to give consent, including not able to effectively communicate or to understand the nature of the conduct being engaged in as a result of having consumed drugs or alcohol or for any other reason. Silence on the part of an individual does not constitute his or her consent.
11. The hearing panel will use a preponderance of evidence standard to evaluate complaints of sexual misconduct. If the panel determines that the offender is responsible for a violation of this policy, the panel will decide the appropriate sanctions in accordance with the Student Code of Conduct. Drug or alcohol use by the offender is not a defense to a charge of sexual misconduct and will not be considered a mitigating factor in assessing appropriate sanction(s).
12. The findings of the hearing (i.e., whether the alleged offender is responsible or not responsible for the violation(s)) including any sanctions that are imposed will be communicated in writing to the offender normally within five working days of the hearing. The findings and sanctions that pertain to the complainant will be communicated to the complainant in writing within five business days as well.
13. Although there are no standard sanctions associated with sexual misconduct violations, sanctions could include suspension and/or expulsion from the University. Other remedies such as no-contact orders and educational efforts may also be imposed.
14. If the alleged offender is found responsible for a sexual misconduct violation, he/she may appeal the decision and/or the sanction to an Appeals Committee. If the complaint disagrees with the findings or sanctions given to the alleged

offender, he/she also may appeal to the Appeals Committee which shall be chaired by the Dean of Students, or designee and comprised of the Title IX Officer, one faculty member and one administrator. The panel members who were involved in the original hearing will not serve on the Appeals Committee for the appeal hearing.

15. Appeals must be submitted within five days of receipt of the findings letter. Information about the grounds for appeal can be found at www.niagara.edu/appeals. Additionally, if the alleged offender or the complainant has concerns about conflict of interest or bias related to the investigation, hearing panel or hearing process, they may appeal on those grounds. Only one appeal is permitted by each party.
16. When an appeal letter is submitted, the other party will be given notice of the grounds of the appeal and will be provided the opportunity to submit a response. In cases where appeals are submitted by both parties, both appeals will be reviewed by the same board. Each student will have the ability to present his/her grounds for appeal and any new evidence, as well as respond to questions from the board and hear the rationale from the hearing officer who chaired the panel that made the original decision. The burden is on each student to present grounds for his/her appeal to the board that will then make the final decision regarding the findings and sanction(s) associated with the case. This decision will be communicated in writing to both the alleged offender and the complainant within five working days of the appeal hearing. If only one party appeals, the other party has the right to attend the hearing and participate even if he/she chooses not to appeal.

At any time during the student conduct process if the complainant or alleged offender desires to seek the services of Counseling Services or Campus Ministry staff, he/she may contact these offices directly or through the Dean of Students.

As stated earlier, Niagara University will not tolerate acts of sexual violence or discrimination, and works to educate all members of the university community about their rights and responsibilities regarding these matters. The role of the Title IX Coordinator in any sexual misconduct investigation or hearing process is to ensure the university is providing due process, fair treatment of all parties, and proceeding in accordance with federal law and university policy. Concerns about process may be directed to the Title IX Coordinator or the Office of Civil Rights (<http://www.hhs.gov/ocr/civilrights/complaints/index.html>).

For purposes of this Policy, the following definitions apply:

“Sexual misconduct” includes sexual harassment, sexual assault, domestic violence, sexual exploitation, gender discrimination and stalking. (This definition is different from the one listed on pg. 1 of policy) _

Sexual Harassment

Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s gender or sexual identity. For example, it is illegal to harass a woman by making offensive comments about women in general.

Harassment can be perpetrated by both men and women, and victims of harassment can be both men and women.

Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

Hostile environment caused by sexual harassment

Is created when the harassment would obstruct the professional or educational access of a reasonable person in a similar situation.

Sexual assault

Sexual assault, at Niagara University, is when a person intentionally touches the sexual or other intimate parts of another person without consent; it includes both non-consensual sexual contact, and non-consensual sexual intercourse.

Non-consensual sexual contact

Contact, either over or under clothing or other obstruction, on or near the chest, genitals, buttocks, or contact with the mouth, without consent.

Non-consensual sexual intercourse

Penetration of the vagina or anus without consent, however slight.

Domestic violence

Domestic violence is when one person does a variety of things to control another person in an intimate relationship. The shift in power can happen very slowly, over a period of time, so that the other person cannot even remember when it happened. Or it can happen very quickly after there is some sort of commitment or some change in the level of intimacy.

Further information from the New York Office for the Prevention of Domestic Violence can be found here: <http://www.opdv.state.ny.us/help/fss/theproblem.html#whatisdv>

Stalking

Stalking is when a person intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
3. is likely to cause such person to reasonably fear that his or her educational access, employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's residence or classroom, place of employment or business, and the actor was previously clearly informed to cease that conduct.

Retaliation

The prohibition against retaliation means that when an individual complains formally or informally to the University about a potential civil rights violation, such as failure to address sexual violence, or participates in an OCR or University investigation or proceeding, the University is prohibited from retaliating against the individual because of their complaint or participation.

Intimidation

Intentional use of fear to induce or restrict behavior. In the case of a hearing, determinations of intent will often turn on the panel's determination of the awareness of the alleged perpetrator.

Consent

"Consent" is a voluntary agreement to engage in sexual activity

Please note:

- Someone who is incapacitated cannot consent;
- Past consent does not imply future consent;
- Silence or an absence of resistance does not imply consent;

- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
- Consent can be withdrawn at any time; and
- Coercion, force, or threat of either invalidates consent.

Incapacitation

Incapacitation is the inability to give consent due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the student from having the capacity to give consent.