

Niagara University Non-Discrimination Policy and Grievance Procedures

SECTOR: OEI
NUMBER: DG18
REVISED: 5/8/2018
ACCESS: Public
REPLACES:
Non-Harassment and Anti-Discrimination Policy (A06) and Harassment & Discrimination (involving Students) Policy

NON-DISCRIMINATION & JURISDICTION

Niagara University affirms its commitment to equal opportunity and non-discrimination and recognizes its responsibility to provide for all employees, students and visitors an environment that is free of discrimination and harassment based on protected category

The Office for Equity & Inclusion (OEI) handles all matters involving allegations and complaints of discrimination based on a protected category (including sex, race, age, disability, color, creed, national origin, religion, ethnicity, gender, gender identity or expression, sexual orientation, marital or familial status, military or veteran status, domestic violence victim status, pregnancy, or other category protected by law).

The laws and compliance requirements imposed on higher education institutions by Title IX (and for New York State institutions, Article 129-B's "Enough Is Enough" legislation) are far more extensive and specific than the broad anti-discrimination directives of other Civil Rights Laws, which is why higher education procedures and policies have language so much more focused on Title IX.

Nevertheless, this Policy applies to all matters involving any discrimination based on a protected category, and we invite anyone who feels they are a victim of any discrimination to address their concerns to the OEI immediately.

PROHIBITED CONDUCT & SCOPE

It is a violation of this Policy to act in a manner that discriminates or harasses another person based on a protected category, as described above.

Sex discrimination, in addition to discrimination based on a person's sex, also includes sexual harassment, sexual assault, domestic violence, dating violence, and stalking.

DEFINITIONS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, AND OTHER TERMS CAN BE FOUND AT THE END OF THIS DOCUMENT.

For cases involving sexual assault, domestic violence, dating violence, or stalking, these procedures apply, but additional procedures also apply, as per New York State's "Enough Is Enough" legislation. Please refer to the Niagara University Sexual Misconduct Awareness & Response Policy.

These Grievance Procedures apply to all complaints by employees, students and third parties.

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RETALIATION

Retaliation, which is materially adverse action taken against a person for reporting or objecting to discrimination or harassment or for participating in an investigation or other proceeding related to discrimination or harassment, is a violation of this Policy, whether or not discrimination or harassment occurred.

This applies to any activity on or off campus, through direct or indirect conduct, via electronic means or social media, or through third parties. Reports of retaliation will be accepted, evaluated and handled under the same processes and procedures set forth in this Policy.

REPORTING

All Niagara University employees (including staff, administration, and faculty, whether full-time or part-time) are expected to report any and all incidents of discrimination, insofar as the behavior affects others (i.e. the reporting obligation does not extend to the victim).

It is recommended that employees report directly to the Title IX Coordinator, but may also report to their supervisor, Deputy Title IX Coordinator, or designated "Responsible Employee."

"Responsible Employees," as defined by Title IX and designated by Niagara University, include the Director of HR, Director of Athletics, coaches, department chairs, deans, corporate officers, Campus Safety officers, immediate managers, Residence Life staff, and the Title IX Coordinator.

Deputy Title IX Coordinators, Responsible Employees, and Supervisors will then immediately report the incident to the Office for Equity & Inclusion (OEI) and Title IX Coordinator.

For helpful charts and contact details, go to www.niagara.edu/oei and click the "How To Report" tab.

Any and all discrimination complaints and reports can always be made directly to the Title IX Coordinator:

Ryan Thompson, Esq.
Title IX Coordinator
Office for Equity & Inclusion (OEI)
O'Shea Hall B27, Po Box 2034
Niagara University, NY 14109
rthompson@niagara.edu
(716) 286-8324
www.niagara.edu/oei

Complaints/reports can be initiated via telephone or email, but general practice is to then follow-up with an in-person meeting with the Title IX Coordinator or Deputy Title IX Coordinator. At this point, the Reporting Party can file an informal or formal complaint/report, depending, in part, on whether the Reporting Party requests anonymity.

In sum and substance, to file a complaint or make a report to the OEI, simply alert the Title IX Coordinator of your intent to do so.

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There is no statute of limitations or deadlines for reporting to the University, even if the incident occurred years earlier. However, note that there are such statutes of limitations in criminal and civil law.

Confidentiality vs. Privacy

On campus, only Health Services, Counseling Services, and Campus Ministry's ordained priests acting in their official capacity can truly be confidential. All other NU employees have an obligation to immediately report any incident of discrimination. There, your privacy will be respected as much as possible.

The OEI will respect a victim's (and every person's) privacy as much as possible. In Enough Is Enough cases involving sexual assault, stalking, domestic or dating violence, the victim is in control of whether any action or investigation moves forward, and the victim's identity can remain private. In certain instances, including imminent danger to the campus or the threat of a repeated attack by the perpetrator, University action may be required to take place without the victim's consent, but even then, will be done so in a way to protect the victim's identity as much as possible and will never force a victim to participate in the investigation.

In discrimination and sexual harassment cases, if the Complainant refuses to participate in the investigation or process and is adamant that the case not be pursued, the Title IX Coordinator will make every attempt to accommodate the requests of the unwilling Complainant while also balancing the need to address such discrimination in the campus community. Oftentimes, remedies can be accomplished without requiring the Complainant to participate or causing the Complainant's identity to be known.

Amnesty

Minor and moderate student conduct violations and crimes that are revealed in reports to the OEI will not be pursued by campus officials. This especially applies to alcohol and drug possession violations. In most cases, these violations will not even be disclosed, except insofar as they are relevant to investigations and/or witness reports. This applies to victims, complainants, respondents, witnesses, the accused, and/or anyone providing information.

INTAKE

Informal Procedures

Upon receiving the report, the Title IX Coordinator will discuss informal and formal procedure possibilities and remedial actions with the Complainant, as well as options for accommodations, including confidential resources on and off campus, and, if applicable, pursuing the matter with police. Note that informal procedures are prohibited with incidents that fall within "Enough Is Enough" laws, including sexual assault, dating violence, domestic violence, and stalking.

If an informal process is appropriate, then the Title IX Coordinator or designee will pursue such actions necessary to stop, prevent and remedy any discriminatory behavior. Informal remedies may include a discussion with the Title IX Coordinator, additional trainings or workshops, or mediation.

If either the Complainant or Respondent does not feel the informal process is appropriate or does not produce a satisfactory resolution, then either party may initiate a formal process with the Title IX Coordinator.

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Decisions and resolutions made through the informal process are based on the allegations and not on any findings. No informal process or agreements shall be construed as evidence that the discriminatory behavior occurred.

Threshold Analysis:

In circumstances in which an informal process is inappropriate (whether prohibited by “Enough Is Enough,” or unsatisfactory to any of the parties, or determined by the Title IX Coordinator that a formal investigation is necessary), a formal process will be commenced, beginning with the Title IX Coordinator conducting a threshold analysis.

The purpose of this threshold analysis is to determine whether there is “reasonable cause to believe” a violation of policy occurred. This analysis will be conducted using an objective-subjective standard consistently applied across cases.

So long as the reported allegations contain sufficient specificity, and, if true, would constitute a violation of policy, no case will be initially dismissed for failing to meet the threshold of “reasonable cause to believe.” The Title IX Coordinator will then be tasked with conducting an initial inquiry that is sufficient enough to gather whatever information and/or evidence necessary to adequately assess the threshold.

(For example, if a retaliation complaint is filed, the Title IX Coordinator would gather the necessary information to examine the chronology of purported events, and, then if it is clearly revealed that based on that chronology, the alleged retaliation could not have occurred, the Title IX Coordinator would find that there is no reasonable cause to believe a violation of policy occurred, and therefore threshold would not be met.)

If it is determined that there is no reasonable cause to believe a violation occurred, no further action will be taken, and parties will be notified. This determination, however, will not prohibit the filing of a same or similar complaint if new evidence is revealed.

If the case is determined to meet threshold and that there is reasonable cause to believe a violation occurred, then a formal investigation will commence.

Threshold analysis decisions will be fully documented.

ACCOMMODATIONS & REMEDIES

The University will take steps necessary to stop discrimination and harassment, prevent the recurrence of such, and correct its discriminatory effects. Doing so includes a wide range of interim accommodations and resources.

The OEI and Title IX Coordinator will assist members of the campus community in connecting with the appropriate resources, which include on- and off-campus counseling, health services, and medical attention provided by SANE nurses (Sexual Assault Nurse Examiners) at local hospitals, all of which are confidential. There are also police reporting options available, and the Title IX Coordinator can assist with connecting Complainants to law enforcement agencies, including the nearby New York State Police Campus Sexual Assault Unit.

Other interim (or sometimes permanent) accommodations include residence building or room reassignment, class schedule reassignment, academic assistance, No-Contact Orders, campus bans, and

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a variety of other potential measures intended to assist the parties and help ensure that they are not disproportionately impacted by an investigation.

Many of these remedies are available during the informal process, as well as during a formal investigation.

For more information on resources and accommodations, go to www.niagara.edu/oei.

INVESTIGATION

Parties will receive prompt notification that an investigation has commenced, and two investigators will be assigned to the case. Parties will be promptly contacted to schedule interviews, if necessary, and other witnesses may also be interviewed.

All relevant evidence will be considered, and parties are encouraged to inform the investigators of any evidence that may exist, as well as present such evidence to the investigators. Both parties shall have an equal opportunity to provide witnesses and other evidence.

The investigation will unfold in a timely manner, as expeditiously as possible, without jeopardizing the integrity of the investigation. Parties will receive periodic updates on the case's progress. The University will strive to conclude its investigations within 60 calendar days, and in the event of extenuating circumstances, will notify the parties of the extended timeline. Often these extensions can occur in cases involving an inordinate number of witnesses.

Once the investigators have reviewed all evidence, they will make a joint determination of the facts, based on a preponderance of the evidence standard (see "Definitions" for more on this standard of proof). These findings of fact will be presented in a written Investigative Report that will be delivered to a decision-maker who will then evaluate the findings of fact and determine whether or not a violation of policy occurred, based on the preponderance of the evidence standard.

This Investigative Report will also be delivered to all complainants and respondents. These parties will then be entitled to reply in writing and respond to this Investigative Report prior to the above decision on responsibility being made. The response is due five (5) calendar days from the date the Investigative Report is delivered.

Which decision-maker presides over the case shall depend on the status of the Respondent:

- If the Respondent is a Student, the decision-maker will be the Dean of Students.
- If the Respondent is a Faculty member, the decision-maker will be the Provost.
- If the Respondent is a Non-Faculty Employee, the decision-maker will be the Director of Human Resources

The above three decision-makers will have training in sexual assault/civil rights and trauma-informed investigations. If the above decision-maker is not trained in such investigations, then the decision-maker will deliberate with the assistance of a trained OEI investigator who was not affiliated with the instant case, or another neutral party trained in such.

After the five-day response period, the decision-maker will have ten (10) calendar days to issue a decision on whether or not a policy violation occurred and what, if any, sanction.

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SANCTIONS & DISCIPLINE

When a determination has been made that the Respondent committed a violation of policy, the decision-maker or designee will determine the appropriate sanctions or disciplinary action to be imposed, and all complainants and respondents will be notified. The Title IX Coordinator will oversee these decisions on sanctions and discipline to ensure such sanctions are administered in accordance with University policy, federal and state laws, including Civil Rights Laws and Title IX.

Disciplinary sanctions shall depend on the status of the Respondent:

- If the Respondent is a Student, possible sanctions and discipline include, among others, probation, suspension, residence hall relocation, and in the most serious cases, expulsion. For cases involving a violation of the Sexual Misconduct Policy, transcript notations will be made in accordance with “Enough Is Enough” laws.
- If the Respondent is a Faculty member, possible sanctions and discipline include, among others, written warnings and reprimands, mandatory conferences, loss of rank, and in the most serious cases, removal for cause. All discipline of full-time faculty members will be conducted in accordance with the NULTA Collective Bargaining Agreement (CBA) and Appendix B of the CBA: Statutes of Niagara University.
- If the Respondent is a Non-Faculty Employee, possible sanctions and discipline include, among others, mandatory verbal conferences, written warnings attached to personnel files, and in the most serious cases, termination.

APPEAL

Either party may appeal the findings, and the appeal process will be conducted in an impartial manner by an impartial decision-maker.

The appellate body shall depend on the status of the Respondent:

- If the Respondent is a Student, the Assistant Vice President for Student Affairs will chair an appellate panel, as per the Student Conduct Policy.
- If the Respondent is a Full-Time Faculty member, the disciplinary process and subsequent review is governed by the NULTA CBA and Appendix B of the CBA: Statutes of Niagara University.
- If the Respondent is a Non-Faculty Employee or Part-Time Faculty Member, the Executive Vice President will appoint an appellate panel.

For Full-Time Faculty, Appeals may be filed based on the grounds and process governed by the NULTA CBA and Appendix B of the CBA: Statutes of Niagara University.

For Students, Part-Time Faculty and Non-Faculty Employees, appeals will be conducted based on internal appeal procedures as established by the Office of Student Affairs (for students) and Human Resources Department (for part-time faculty and non-faculty employees). The grounds for appeal are as follows:

- the investigation was not conducted in conformity with prescribed procedures;
- the findings of fact were not sufficient to establish that a violation occurred and/or not supported by a preponderance of evidence;
- the sanction imposed was not appropriate for the violation for which the Respondent was found to be responsible; or

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- the existence of new relevant facts that were not reasonably available at the time of the investigation.

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DEFINITIONS

Preponderance of Evidence: The “preponderance of the evidence” standard of proof is used in NU’s investigations, findings of fact, and determinations of responsibility and policy violation. This standard requires a finding of “more likely than not.” Essentially (using whole numbers only), the findings and determinations are made based on a belief that there is a 51% or greater chance that it occurred. This standard should not be confused with “clear and convincing evidence” or “beyond a reasonable doubt” standards that both require a substantially higher burden of proof.

Sexual Harassment:

In the employment context, sexual harassment is unwelcome, sex- or gender-based verbal or physical conduct that unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, or offensive work environment.

In the education context, sexual harassment is unwelcome, sex- or gender-based verbal or physical conduct that is sufficiently severe, persistent, or pervasive that it interferes with, denies, or limits an individual’s ability to participate in or benefit from the university’s educational programs and activities.

It can take two forms: power differentials (*quid pro quo*) or hostile environment:

1. *Quid pro quo* sexual harassment exists when:
 1. There are unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; and
 2. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or academic status; or
 3. Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions adversely affecting such individual.
2. *Hostile environment in the employment context* includes any situation in which there is harassing conduct that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, or offensive work environment.

Hostile environment in the education context includes any situation in which there is harassing conduct that limits, interferes with, or denies educational benefits or opportunities, from both a subjective (the complainant’s) and an objective (reasonable person’s) viewpoint.

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The determination of whether an environment is “hostile” is based on a totality of circumstances. These circumstances may include:

1. The degree to which the conduct interfered with the complainant’s educational or work performance;
2. The type, frequency, and duration of the conduct;
3. The identity of and relationship between the accused and the complainant(s);
4. The number of individuals involved;
5. The age and sex of the accused and the complainant(s);
6. The location of the incident(s) and the context in which it occurred;
7. The nature and severity of the conduct;
8. Whether the conduct was physically threatening;
9. Whether the conduct was humiliating;
10. The effect of the conduct on the complainant’s mental or emotional state;
11. Whether the conduct arose in the context of other discriminatory conduct;
12. Whether the speech or conduct deserves the protections of academic freedom or the first amendment.
13. A single or isolated incident of sexual harassment (e.g., rape) may be severe enough to create a hostile environment.

Sexual Assault: Sexual assault is any sexual act committed against a person without their consent. Consent is a voluntary, verbal agreement between equal and unimpaired partners, without coercion.

"Sexual act" shall have the same meaning as "sexual activity" and "sexual contact" as provided by federal law.

Sexual Contact is:

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

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Domestic violence: A felony or misdemeanor crime of violence committed—

(A) By a current or former spouse or intimate partner of the victim;

(B) By a person with whom the victim shares a child in common;

(C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

(D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or

(E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Dating violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse, but does not include acts covered under the definition of domestic violence.

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

Types of Discrimination Prohibited by Federal Law

- Age
- Disability
- Equal Pay/Compensation
- Genetic Information
- Harassment
- National Origin
- Pregnancy
- Race/Color
- Religion
- Sex
- Sexual Harassment

Specific definitions may be found at: <https://www.eeoc.gov/laws/types/>

Types of Discrimination Prohibited by New York State Law

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- Age
- Race
- Creed
- Color
- National Origin
- Sexual Orientation
- Military Status
- Sex
- Disability
- Predisposing Genetic Characteristics
- Familial Status
- Marital Status
- Domestic Violence Victim Status

Specific definitions may be found at: <https://dhr.ny.gov/law#296>

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