

<p>Sexual Misconduct Awareness & Response Policy <i>(Covers institutional awareness and response to assault, domestic violence, dating violence, and stalking, as required by Title IX and the New York State Education Law)</i></p>	<p>Revised: July 16, 2020 Effective date: September 30, 2014</p>
<p>To be posted openly Related policies: <ul style="list-style-type: none"> • Student Code of Conduct • Student Disciplinary Procedure • Student-Athlete Code of Conduct • Harassment & Discrimination Policy • Harassment & Discrimination (Involving Students) Policy • Workplace Violence Policy </p>	<p>Position responsible for coordinating compliance: Title IX Coordinator</p>

IF THIS IS A MEDICAL OR SAFETY EMERGENCY, CALL 911 OR (716) 286-8111.

IF YOU HAVE EXPERIENCED VIOLENCE, SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING, AND NEED IMMEDIATE HELP OR GUIDANCE, CALL THE TITLE IX COORDINATOR AT (716) 286-8324, CAMPUS SAFETY AT (716) 286-8111, OR CONTACT A MEMBER OF THE RESIDENCE LIFE STAFF, AND SIMPLY SAY "I NEED TO REPORT SEXUAL MISCONDUCT." THIS WILL PUT YOU IN TOUCH WITH A TRAINED RESPONDER.

PURPOSE

The purpose of this document is provide a single, easily accessible and user-friendly document for students, employees, and community members to find information regarding Niagara University's student conduct rules, policies, methods to promote awareness, rights, protections, and procedures regarding sexual assault, domestic violence, dating violence, and stalking (collectively, "Sexual Misconduct").

For purposes of this policy, "sexual assault," "dating violence," "domestic violence," and "stalking" are as defined by federal regulations, and are collectively referred to as "Sexual Misconduct." Harassment and other forms of gender discrimination that do not fall under this definition of Sexual Misconduct are addressed by the University's Harassment policies, which may be found at policies.niagara.edu.

Definitions of these terms, the distinction between "private" and "confidential" reporting, the definition of **affirmative consent**, and other terms, are at the end of this

policy.

If you have questions regarding this policy, or if you have witnessed or been the victim of a sexual assault on campus or in association with University program or activity, you may call the Title IX Coordinator for immediate assistance at (716) 286-8324, or follow the instructions in bold on the front page.

If it is after business hours and you need immediate assistance, please call Campus Safety at (716) 286-8111 and or contact a member of the residence life staff and say "I need to report Sexual Misconduct (sexual assault/domestic violence/dating violence/stalking)." This will put you in touch with a trained responder.

The University will use all reasonable efforts to keep your report as private as you request. Information on **confidential reporting** (which can only be made to certain professionals) is set forth below, under "Confidential Reporting."

SCOPE

This policy and procedure applies to any incident wherein a student is the reporting party or the accused/ respondent. In the event a faculty member, other employee or campus guest is involved, additional procedures and requirements may govern university response; **However, the protections, rights, and resources for students set out in this document are assured, regardless of whoever else is involved.**

SUMMARY: MAKING A REPORT

If you are a student and experience sexual assault, dating violence, domestic violence, stalking, either on campus, in association with our programs, when studying abroad, or while you are a student, you may make a **private** complaint to a member of the Residence Life staff, the Dean of Students, the Title IX Coordinator, Campus Safety, Human Resources, or the General Counsel's Office. Your report will be addressed per the procedures below; THIS INCLUDES THE OPTION—BUT NOT THE REQUIREMENT— TO REPORT THE MATTER TO LAW ENFORCEMENT, AND THE OPTION TO WITHDRAW YOUR COMPLAINT AT ANY TIME, AND FOR ACTION UNDER THIS POLICY TO CEASE (unless there is a risk of danger to the campus).

Please know that students may be entitled to interim protections, including but not limited to: re-arranged living arrangements and class times to limit interactions with a reported abuser; for a full recitation of your rights, please see

<https://www.niagara.edu/sexual-assault-bill-of-rights/>

If you are an employee, contractor, officer, trustee, or guest of Niagara University and experience sexual assault, dating violence, domestic violence, stalking on our campus or in association with our programs, you may you may report it to your supervisor, the Director of Human Resources, the Title IX Coordinator, Campus Safety, or the General Counsel, to be addressed per the appropriate guest, disciplinary policies or collective bargaining agreement. 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 behavior that violates Title IX; this includes sexual assault, dating violence, domestic violence and stalking (collectively, “Sexual Misconduct”), as well as harassment and gender discrimination.

POLICY

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, staff, and guests. Sexual assault, dating violence, domestic violence and stalking (collectively, “Sexual Misconduct”), as well as harassment, and gender discrimination are antithetical to this environment and will be addressed according to applicable policies and collective bargaining agreements.

This Policy, which covers Sexual Misconduct, is a major component of this commitment. Most recently, this policy has been revised to assure compliance with both the letter and spirit of both the Violence Against Women Act (VAWA) and article 129-b of the NY Education Law (the “Enough is Enough” Act of 2015).

This Policy applies to full-time and part-time undergraduate and graduate students (including PhD candidates), and to behavior that occurs both on and off campus.

In addition to this policy, students, faculty, and staff are covered by the University’s Non-Discrimination Policy and Grievance Procedures, located on the policy database (policies.niagara.edu).

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.

IMMEDIATE ASSISTANCE AFTER SEXUAL ASSAULT OR INCIDENT

Students and others who experience sexual assault 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. Among other ways, this may be initiated by calling Campus Safety at (716) 286-8111 and saying “I need to report a sexual assault.”

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. Niagara University has made arrangements for a sexual assault examination nurse (“SANE”) to address immediate reports of sexual assault; you may make **confidential** arrangements for such an examination either through Health Services or, after business hours, through a call to Campus Safety (716) 286-8111.

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

Students may also contact a member of the Residence Life staff for **private** assistance in seeking appropriate resources both on and off campus. Students may also directly contact the following resources (some private, some confidential), both on-and-off-campus:

On Campus Resources:

Office for Equity & Inclusion:

Megan Altman-Cosgrove

Interim Director/Title IX Coordinator & Civil Rights Officer

Office for Equity & Inclusion

O'Shea Hall B27

Niagara University, NY 14109

716.286.8314

mcosgrove@niagara.edu

Campus Safety:

716.286.8111

www.niagara.edu/safety

Student Affairs:

716.286.8405

www.niagara.edu/student-affairs

Counseling Services (confidential):

716.286.8536

www.niagara.edu/counseling

Health Services (confidential):

716.286.8390

www.niagara.edu/healthcenter

Campus Clergy (confidential: ordained priests in official counseling sessions only):

716.286.8400

www.niagara.edu/campus-ministry-staff

Off Campus Resources:

YWCA of Niagara Frontier (confidential and free, 24-hour hotline): Phone: 716.433.6716 or Text: 716.870.9726
www.ywcaniagarafrontier.org

Pinnacle Community Services (Confidential and free, 24-hour Domestic Violence hotline): 716.299.0909
<https://www.pinnaclecs.org/>

Crisis Services (confidential and free, 24-hour hotline): 716.834.3131
crisiservices.org/rape-domestic-violence

Eastern Niagara Hospital:
716.514.5700
521 East Avenue, Lockport, NY 14094
www.enhs.org

Mount St. Mary's Hospital:
716.297.4800
5300 Military Road, Lewiston, NY 14092
www.chsbuffalo.org/mount-st-marys-hospital

DeGraff Memorial Hospital:
716.694.4500
445 Tremont St, North Tonawanda NY, 14120
www.kaleidahealth.org/degraff

New York State Police Campus Hotline:
844.845.7269
consentfirst.troopers.ny.gov
Martha E. LaCorte, NYS Police Crime Victim Specialist
716.434.5589

Niagara County Sheriff's Office Victim Assistance:
716.438.3306
<https://www.niagarasheriff.com/programsAndServices>

REPORTING OPTIONS

If you believe that you or someone you know has been victim of sexual assault, domestic violence, dating violence, or stalking on University property, an off-campus location, electronically, during study abroad, or at a University-sponsored event, by a member of the University community, you are encouraged to report the incident.

YOU HAVE THE RIGHT TO: MAKE A REPORT TO CAMPUS SAFETY, STATE OR LOCAL LAW ENFORCEMENT-- OR TO CHOOSE NOT TO REPORT; TO REPORT THE INCIDENT TO NU; TO BE PROTECTED BY NU FROM RETALIATION FOR REPORTING THE INCIDENT, AND TO RECEIVE ASSISTANCE AND REOURCES (listed below) FROM NU.

1. **Confidential Reporting.** Victims of sexual misconduct, who want the information to remain confidential, may report to a counselor 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.

Reports made to a licensed counselor or health care provider, a Vincentian Priest during a pastoral visit, 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 confidential counseling support off campus. The university encourages any student who has been sexually assaulted to also consult their parents/guardians.

2. **Campus Security Authorities.** 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 are considered to be "Campus Security Authorities," and must report crimes involving sexual assault. Further, Niagara University requires all non-confidential employees to report incidents that may violate Title IX, including sexual assault, sexual harassment and other forms of gender discrimination.
3. **Who and Where to Report.** Reports of sexual assault, dating violence, domestic violence, and stalking can be made to the Title IX Coordinator and/or Dean of Students listed below.

Title IX Coordinator – Megan Altman-Cosgrove (O’Shea B-27, (716) 286-8314)

Dean of Students – Jason Jakubowski (Gallagher 111, (716) 286-8405)

Reports can also be made to a member of the Residence Life staff, Campus Safety at (716) 286-8111, or to the General Counsel (716) 286-8319. Reports can also be made via the Whistleblowing policy, which can be found at policies.niagara.edu.

Victims and bystanders may also report to local law enforcement listed below, with or without the assistance of Campus Safety.

Lewiston Police Department (716) 754-8477

Niagara Falls Police Department (716) 286-4570

State Police (585) 344-6200

NOTE: 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 the Clery Act.

NOTE: The University will seek consent from the complainant to move forward with an investigation. In some cases, the University may be obligated to investigate a report of an incident that may pose a risk to the campus community; to the extent privacy can be maintained upon such determination, it shall be. Factors used to determine whether to honor a reporting individual's request to decline an investigation include, but are not limited to:

- a. Whether the accused has a history of violent behavior or is a repeat offender;
- b. Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- c. The increased risk that the accused will commit additional acts of violence;
- d. Whether the accused used a weapon or force;
- e. Whether the reporting individual is a minor; and
- f. Whether the institution possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

NOTE: If an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public event, the institution is not obligated to begin an investigation based on such information. The institution may use the information provided at such an event to inform its efforts for additional education and prevention efforts.

4. **Alcohol and/or Drug Use Amnesty.** The health and safety of every student at the University is of utmost importance. Niagara University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. **Niagara University strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institutional officials.**

A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to institutional officials or law enforcement will not be subject to Niagara University's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

INTERIM MEASURES; ASSISTANCE AND RESOURCES

When a student reports being a victim of sexual misconduct (dating or domestic violence, sexual assault, and/or stalking) to the University, interim measures may be put in place to protect all parties and minimize the burden on the victim. The Title IX Coordinator or qualified responder will ensure that all interim measures are provided if a victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the incident to campus safety or local law enforcement.

Interim measures include, but are not limited to, consideration of interim suspension of the accused, 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 university no-contact orders*; obtaining an off-campus no-contact or protective order; assistance interpreting and applying a duly issued protective order (either from a local or out-of-state court) and providing transportation assistance around campus.

In addition, the university shall provide you with resources related to mental health counseling, medical services, information on sexually transmitted diseases, information about SANE options, victim advocacy, financial aid, and information about additional external resources, at no fee, regardless of part-time, full-time, graduate or undergraduate status.

Support for international students can also be provided regarding their visa and immigration status.

Interim measures will remain in place for an indefinite period of time or until the investigative and/or disciplinary process has ended. Such measures will be maintained confidentially so long as it does not impair the ability of Niagara University to provide the accommodation or interim measure.

Both the accused or respondent and the reporting individual shall, upon request and consistent with the institution's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects him or her, and shall be allowed to submit evidence in support of his or her request

*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 or the General Counsel can assist in obtaining a court order.

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 an alleged violation of this policy is protected against any type of retaliation that occurs directly or indirectly or through a third party. Reports of retaliation should be reported to the Title IX Coordinator immediately.

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

INVESTIGATIONS REGARDING SEXUAL MISCONDUCT PERPETRATED BY STUDENTS

Every student is afforded the right to request that student conduct charges be filed against a student accused of violating this policy, and to request that proceedings consistent with the rights and protections afforded in this and other relevant policies are conducted with regard to any faculty member, employee, or guest who may be accused.

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 rights of all parties involved. The victim or complainant will be provided the Sexual Misconduct Policy which outlines their rights, either electronically or in hard copy format, as well as a list of resources and their bill of rights. All parties involved will be kept abreast of the investigation process. .

Investigations are conducted by trained members of the Title IX team (who are trained annually) or, in some cases, by a qualified external investigator.

In cases where law enforcement is involved, the university will comply with law enforcement’s investigative efforts and will conduct its own investigation concurrently for purposes of this policy; any delay in university proceedings at the request of law enforcement shall not exceed 10 days without written justification from the investigating department. Unless compelled by subpoena or given the express permission of the reporting individual, 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.

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 a finding and sanction(s) when appropriate.

Mediation will not be used as a means to address or resolve cases of sexual misconduct.

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 a finding and sanction(s).

Although there are no standard sanctions for violations of the Sexual Misconduct Policy, any sanctions listed within the Student Code of Conduct including but not limited to warning, loss of privileges, deactivation, referral to counseling, disciplinary service, fine, restitution, educational program or project, disciplinary probation, contract probation,

residential relocation or suspension, university suspension and/or university expulsion. In cases where university suspension or expulsion occur, a transcript notation will be made according to article 129-b of the NY Education Law (the “Enough is Enough” Act of 2015).

Sexual Misconduct Hearings

A hearing may be scheduled at the discretion of the Title IX Coordinator and/or Dean of Students, or when a resolution agreement cannot be agreed upon by the victim/complainant and accused student. All hearings involving allegations of sexual assault, domestic violence, dating violence, stalking or harassment will be conducted in accordance with the normal rules and procedures of the student conduct process, with the exception of additional rules as required by state and federal law.

Therefore, the procedures specified in this section supersede any 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 Dean of Students or designee will determine whether an administrative hearing or a panel hearing shall take place.
2. In the case of an administrative hearing, the Dean of Students or his/her designee, or other appropriately trained party, shall serve as the hearing officer. In the case of a panel hearing, the group 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.
3. Under Title IX and per NY State law, both the alleged offender and reporting individual 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.
4. Both the respondent and reporting individual will receive notice of charges at least 48 hours in advance of the hearing describing the date, time, location, and factual allegations concerning the violation, reference to the specific code of conduct provision(s) alleged to have been violated, and possible sanctions.
5. The reporting individual(s) and respondent may each have an Advisor of their choice present during the hearing. The Advisor may not question witnesses or offer statements and is present to assist and privately advise the party regarding the proceedings. As determined by the hearing officer, student may request a reasonable break in proceedings to consult their advisor.
6. Witnesses may be asked to participate in the hearing. The reporting individual and the respondent 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 presence of a Campus Safety officer or Student Affairs 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.

7. The hearing will be recorded, and will begin with the hearing officer/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 reporting individual will then have an opportunity to present his/her opening remarks to the panel. The reporting individual may choose to present her/his testimony without the alleged offender being present. Several options exist where the reporting individual does not want to be present in the room with the alleged offender. The testimony presented to the hearing officer/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 reporting individual has the right to be present for or listen to all testimony given during the hearing, if he/she chooses.
8. The hearing officer/panel will then call witnesses and has the ability to recall the alleged offender and any witnesses, including the reporting individual for clarification. Cross examination by the alleged offender and reporting individual will not be permitted.
9. All students have 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.
10. The degree of impairment of the reporting individual's ability to give or withhold consent may be introduced into evidence. **Affirmative consent is defined as an affirmative indication of a voluntary agreement to engage in a particular sexual act or conduct in question (see definition on pg. 11).**
11. The hearing officer/ panel will use a preponderance of evidence standard (i.e., more likely than not the action occurred) 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. During the determination of responsibility, the prior sexual history with persons other than the party in the conduct process or their own mental health diagnosis and/or treatment will be excluded from consideration. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the determination of sanctions.
13. The findings of the hearing (i.e., whether the alleged offender is responsible or not responsible for the violation(s), findings of fact, and any sanctions that are imposed, as well as the rationale for the findings of fact and sanctions will be communicated in writing to the offender normally within five working days of the hearing. The findings, sanctions, rationale for sanctions imposed that pertain to the reporting individual will be simultaneously communicated to the reporting

- individual in writing within five business days as well.
14. Any sanctions listed within the Student Code of Conduct may be assigned to a responsible student including but not limited to warning, loss of privileges, deactivation, referral to counseling, disciplinary service, fine, restitution, educational program or project, disciplinary probation, contract probation, residential relocation or suspension, university suspension and/or university expulsion. Other remedies including, but not limited to, no-contact orders and educational efforts may also be imposed.
 15. Transcript notation will be made for students found responsible through the conduct process for crimes of violence, including, but not limited to, sexual violence. The notation will state: "suspended after the finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation," as applicable. Should the student withdraw from the university while the investigation of the complaint is pending, his or her transcript will note: "withdrew with conduct charges pending." See Appendix I: Transcript Notation.
 16. If the alleged offender is found responsible for a violating this policy, he/she may appeal the decision and/or the sanction to an Appeals Committee. If the complainant 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.
 17. Appeals must be submitted within five business 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 reporting individual 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.
 18. 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 form 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.
 19. If one party requests to review the record of the original hearing in preparation for an appeal, they may either listen to the recording and take notes, or pay to have the original hearing transcribed. Notice will be given to the other party that these options are available to them as well, so as to provide the same access and resources.
 20. The appeal decision will be communicated in writing to both the alleged offender and the reporting individual within five business 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 reporting individual 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.

Concerns about process may be directed to the Title IX Coordinator or the Office of Civil Rights at: (<http://www.hhs.gov/ocr/civilrights/complaints/index.html>).

Definitions

The following definitions apply to important terms referenced throughout this policy:

“Affirmative consent” is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participants’ sex, sexual orientation, gender identity, or gender expression.

1. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol;
2. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act;
3. Consent may be initially given but withdrawn at any time, and when consent is withdrawn or can no longer be given, sexual activity must stop;
4. Coercion, force, or threat of either invalidates consent.
5. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

“Advisor” is an individual of the respondent or reporting parties’ choosing. The Advisor can meet with the student to discuss the student’s rights and 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 at any point, 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.

“Title IX Coordinator” shall mean the Title IX Coordinator and/or his or her designee or designees.

"Bystander" shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.

"Code of conduct" shall mean the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.

"Confidentiality" may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C.1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.

"Privacy" may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate institution officials. Institutions may substitute another relevant term having the same meaning, as appropriate to the policies of the institution.

"Accused" shall mean a person accused of a violation who has not yet entered an institution's judicial or conduct process.

"Respondent" shall mean a person accused of a violation who has entered an institution's judicial or conduct process.

"Reporting individual" shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.

"Sexual activity" shall have the same meaning as "sexual act" and "sexual contact" as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246(3). (*See below*)

"Domestic violence", "dating violence", "stalking" and "sexual assault" shall be defined by each institution in its code of conduct in a manner consistent with applicable federal definitions.

Per applicable federal definitions:

Domestic violence. (i) 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.

(ii) For the purposes of complying with the requirements of this section and §668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

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.

(i) 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.

(ii) For the purposes of this definition—

(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(B) Dating violence does not include acts covered under the definition of domestic violence.

(iii) For the purposes of complying with the requirements of this section and §668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Stalking. (i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

Sexual Contact

(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.

Appendix I: Transcript Notation

Niagara University shall abide by the requirements of Article 129---B with regard to transcript notation.

Transcript Notation: Law

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)---(VIII)[see definitions below], institutions shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they "withdrew with conduct charges pending." Each institution shall publish a policy on transcript notations and appeals seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

Appeal of transcript notation: Law

Appeals of permanent transcript notation shall be made per the governing regulations of FERPA, as set forth below:

§99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of

privacy, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under §99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 61 FR 59296, Nov. 21, 1996]

§99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall:

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall:

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59296, Nov. 21, 1996]

§99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by §99.21 must meet, at a minimum, the following requirements:

- (a) *The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.*
- (b) *The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.*
- (c) *The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.*
- (d) *The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under §99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.*
- (e) *The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.*
- (f) *The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.*