

Sexual Misconduct Policy

Sexual misconduct is the term used by the College to encompass non-consensual sexual behavior, including sexual assault, non-consensual sexual contact, non-consensual sexual intercourse, and sexual exploitation. These are all forms of unwanted actual or attempted sexual activity and are violations of the College's Student Code of Conduct.

Sexual assault is defined as a physical sexual act or acts committed against a person's will and consent, or when a person is incapable of giving active consent, incapable of appraising the nature of the conduct, or incapable of declining participation in, or communicating unwillingness to engage in, a sexual act or acts. Sexual assault is considered to be an extreme form of sexual harassment. * Included in this definition of "sexual assault" are what is commonly known as "rape," whether forcible or non-forcible, and "date rape" and "acquaintance rape." Sexual assault can be committed by both males and females, and in both heterosexual and same-sex encounters. Nothing contained in this definition shall be construed to limit or conflict with the sex offenses enumerated in Article 130 of the New York State Penal Law, which shall be the guiding reference in determining if alleged conduct is consistent with the definition of sexual assault.

Non-consensual sexual contact means the deliberate touching of another person's intimate body parts, however slight, with any body part or object, by a man or a woman upon another man or woman that is without active consent and/or by physical force, violence, threat of violence, intimidation, or coercion. Using force, violence, threat, intimidation or coercion to cause a person to touch his or her own or another person's intimate body parts is also considered non-consensual sexual contact.

Non-consensual sexual intercourse means any sexual penetration, however slight, with any body part or object by a man or woman upon a man or a woman that is without active consent and/or by force. Intercourse includes: vaginal penetration, anal penetration, and oral sex (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Sexual exploitation means taking non-consensual sexual advantage of another person, and includes causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person; prostituting another person; recording, photographing, or transmitting identifiable images of private sexual activity and/or intimate body parts of another person; allowing third parties to observe the sexual acts of others without the actors' active consent; engaging in voyeurism; and/or knowingly or recklessly exposing another person to significant risk of sexually transmitted infection.

At Geneseo, **active consent** is freely given, mutually clear, and understandable words or actions that indicate a willingness to participate in a mutually welcome sexual activity. Silence in and of itself cannot be interpreted as active consent.

Active consent cannot be gained through the use of physical force, threats, intimidation or coercion.

Incapacitation means the physical and/or mental inability to make informed, rational judgments. Persons incapacitated as a result of the consumption of alcohol or other drugs, persons who are unconscious, asleep or otherwise physically helpless, persons under the legal age of consent (17), and persons who have an intellectual developmental disability can never give active consent.

Active consent to any one specific form of sexual activity does not automatically imply active consent to any other specific forms of sexual activity, or to future sexual acts.

Active consent may be withdrawn at any time without fear of **retaliation**. Retaliation is defined as any intimidating, harassing, or retributive action by any person directed toward a sexual misconduct complainant. Retaliation against any person who files a complaint about any form of sexual misconduct or who serves as a witness or assists a victim of sexual misconduct is strictly prohibited and will result in conduct action.

In New York State, having sexual intercourse with someone who cannot give active consent is rape.

*For more information on sexual harassment, see the College's sexual harassment policy.

Approved by College Council
12/9/11