

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 affirmative 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 an extreme form of sexual harassment.* Sexual assault includes what is commonly known as "rape," whether forcible or non-forcible, including what is commonly called "date rape" and "acquaintance rape," fondling, statutory rape, and incest. For statutory rape, the age of consent in New York State is 17 years old. Sexual assault can be committed by anyone, regardless of sex, sexual orientation, gender identity or gender expression. 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.

Affirmative consent is a knowing, and voluntary and mutual decision among all participants to engage in sexual activity. Affirmative consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in 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 participant's sex, sexual orientation, gender identity or gender expression.

Affirmative 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. Affirmative consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Affirmative consent may be initially given but withdrawn at any time. Affirmative 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. Affirmative consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When affirmative consent is withdrawn or cannot be given, sexual activity must stop. Affirmative consent may be withdrawn at any time without fear of retaliation. Retaliation is defined as any intimidating, harassing, or retributive action including but not limited to violence, threats of violence, property destruction, adverse educational or employment consequence, and bullying of any person for reporting a violation or for participating in any way in the investigation or conduct process.

Non-consensual sexual contact means the deliberate touching of another person's intimate body parts, however slight, with any body part or object, by any person that is without active affirmative 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 their 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 person upon another person that is without active affirmative 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 affirmative consent; engaging in voyeurism; and/or knowingly or recklessly exposing another person to significant risk of sexually transmitted infection. Incapacitation means the physical and/or mental inability to make informed, rational judgments about participating in sexual activity. Persons who are not merely under the influence of drugs or alcohol but incapacitated as a result of the consumption of alcohol or other drugs, persons who are unconscious, asleep or otherwise physically helpless, and persons under the legal age of consent (17) can never give active affirmative consent. Persons who do not have the capacity to understand the act, its nature, and possible consequences of the act can never give active affirmative consent.

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

Approved by College Council

December 22, 2011

Revisions Recommended by SUNY Working Group on Sexual Violence Prevention and

Approved by SUNY Geneseo College Council

March 25, 2015

Revised July 23, 2015

Revised March 18, 2018