

## APPENDIX 5

### Sexual Misconduct Policies

It is the University's desire to create a supportive climate that will encourage the reporting of sexual misconduct incidents. The University encourages students to report these incidents promptly to law enforcement and University personnel. Reporting of these incidents is the only mechanism by which offenders can be officially sanctioned, thereby reducing the risk of repeat occurrences. Reporting provides the opportunity for an understanding of the role the University can and should play in providing compassionate, effective intervention, support and remediation, and most importantly, to help prevent such incidents from occurring.

#### Key Terms

- **Consent** – means an affirmative, conscious, voluntary agreement by all participants to engage in sexual activity, communicated through mutually understandable words and/or actions. Affirmative consent must be continuously present throughout an interaction, for all sexual activities, and may be modified, withdrawn or revoked at any time. It is the responsibility of each person involved in the activity to ensure that affirmative consent has been obtained from the other or others to engage in sexual activity.
- **The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, can never by itself be assumed to be an indicator of consent.**
- Past consent does not constitute present consent.
- Equal partners requires individuals who have the capacity to consent.
- Consent **cannot** be any of the following:
  - Inferred from silence, the absence of a "no", or lack of protest or resistance.
  - Obtained from a person who is asleep or otherwise mentally or physically incapacitated and this condition was known or reasonably should have been known by the other individual(s) involved in the designated incident.
  - Obtained from a person who is incapacitated by intoxicants such as alcohol, drugs or medication, and this condition was known or reasonably should have been known by the other individual(s) involved in the designated incident. Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of the sexual interaction). Note: a person may still be conscious, but lack the capacity to consent to a sexual act(s).
  - Obtained by threat or force.
  - Obtained through coercion. Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to engage in sexual contact. When a person makes clear that they do not want to participate in a particular form or sexual contact, that they want to stop, or that they do not want to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, (iv) the duration of the pressure, and (v) the relative positions within the University community of those involved.

It shall not be a valid excuse to alleged lack of affirmative consent that the respondent believed that the complainant consented to the sexual activity under either of the following circumstances:

- The respondent's belief in affirmative consent arose from the intoxication or recklessness of the respondent;
- The respondent did not take reasonable steps, in the circumstances known to the respondent at the time, to ascertain whether the complainant affirmatively consented.

Meaning, the intoxication of the respondent does not diminish responsibility to obtain consent. One's own level of intoxication will not serve as a defense of that individual's failure to reasonably assess consent or incapacitation in another.

It is also important to note that lack of intent is not an acceptable defense for violating the sexual misconduct policy. For instance, it is no defense to a report of sexual harassment that the respondent did not intend to harass.

**Prohibited Behaviors** – Any sex or gender-based behavior, attempted or completed, that goes beyond the boundaries of consent (as described above). Intoxication of the respondent does not diminish responsibility for an act of sexual misconduct. The following behaviors are prohibited:

- **Relationship Abuse and Domestic/Interpersonal Violence** – Relationship abuse and violence involves one or more of the following elements:
  - Domestic Violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction and/or 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.
  - Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of:
    - Length of the relationship
    - The type of relationship
    - The frequency of interaction between persons involved in the relationship
  - Domestic or dating violence may include, but is not limited to, the following types of behavior:
    - Battering that causes bodily injury.
    - Emotional abuse reflecting apprehension of bodily injury or property damage.
    - Repeated telephonic or other forms of communication – anonymously or directly – using coarse language or threats in order to intimidate, terrify, annoy, harass, threaten, or offend.
    - Sexual assault or harassment.
    - Forcible denial of use of or access to owned or shared assets, or limiting or controlling access to educational or work opportunities.
    - Coercion used to compel another to act as directed.
    - Isolation used to deprive another of personal freedom of movement or access to friends, family, or support systems.
- **Retaliation** – adverse action or treatment taken against anyone for reporting, supporting, or assisting in the reporting and/or adjudication of any of the behaviors prohibited in the Sexual Misconduct policy, or against anyone perceived to be involved in any of these actions. This includes attempts or threats of retaliation, intimidation, violation of a no-contact order, harassment, or efforts to impede an investigation. Retaliation is a violation of policy whether or not the underlying complaint of harassment, discrimination, or any type of sexual misconduct is proven.
- **Sexual Assault** – an offense that may be committed by a stranger or an individual(s) known to the reporting person that is classified as forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigations. This may include but not be limited to an act accomplished without consent or by force or by threats of bodily injury and involving penetration of a person's genitalia, oral, or anal openings in relation to the following: sodomy (anal intercourse); forced oral copulation (oral genital contact); rape by a foreign object (forced penetration by a foreign object, including a finger); vaginal-penile

penetration (intercourse). Any penetration, however slight the penetration, is sufficient to complete the act of sexual assault.

- **Sexual Battery** – Any intentional sexual contact, however slight, with any object, by a person upon a person, without consent. Sexual contact includes contact, above or beneath clothing, with the breasts, buttocks, groin, genitals or anus, or touching another with any of these body parts, or making another touch someone or themselves with or on any of these body parts, or any other bodily contact in a sexual manner.
- **Sexual Exploitation** – sexual misconduct that occurs when a person takes unjust or abusive sexual advantage of another for the benefit of anyone other than the exploited party; and that behavior does not otherwise constitute sexual assault. Examples of sexual exploitation include, but are not limited to, causing or attempting to cause the incapacitation of another person to gain a sexual advantage, prostituting another student; non-consensual video or audio-taping or photography of any type (web-cam, camera, Internet exposure, etc.) or distribution of such for a sexual purpose or to cause injury, humiliate, harass, or degrade another; going beyond the boundaries of consent (such as letting your friends surreptitiously watch you having consensual sex); engaging in sexual activity in the presence of an unconsented to third party; engaging in voyeurism; exhibitionism; and knowingly transmitting an STI/STD or HIV to another student.
- **Sexual Harassment** – events or actions (verbal, visual, or physical in nature) that are unwelcome (neither solicited nor incited and are regarded by the recipient as undesirable or offensive) conduct of a sexual nature that would be offensive to a reasonable person, which could interfere with an individual's academic pursuits or create or substantially contribute to an intimidating or hostile work, academic, or student living environment. Sexual harassment may be found in an unusually severe single episode, as well as in persistent behavior.

**Stalking** – Please see Student Conduct Code for a full definition of stalking at this link:  
<https://www.chapman.edu/students/policies-forms/student-conduct/index.aspx>

### **Sanctioning for sexual misconduct**

The sanctions generally applicable to a student who is found responsible for violating Chapman's Student Conduct Code are found within the [sanctions](#) section of the Code. Engaging in Sexual Misconduct is a violation of the Student Conduct Code and will result in the imposition of one or more of such sanctions from warnings, educational sanctions, up to and including suspension or expulsion, depending on the severity of the incident in question and the student's prior conduct history. While the sanctioning process is individualized, and informed by contextual factors, the sanction for an individual found responsible for a violation of sexual assault typically includes a multi-year suspension or expulsion.

Sanctions against an employee who is found to have engaged in behavior that violates the Harassment and Discrimination policy (including sexual harassment or sexual violence) or may include, but are not limited to, verbal or written warnings, suspension, or termination from employment. If termination of a faculty member is contemplated, applicable governing rules will be followed.

### **Amnesty**

To encourage and support the reporting of incidents of sexual misconduct, students who participate as witnesses or complainants in sexual misconduct investigations will not be held accountable for violations of the Code that may have occurred at the time of or as a result of the incident in question (for example, being under the influence of alcohol, marijuana or other controlled substances), unless the University determines that the violation was egregious. Egregious violations includes, but are not limited to, actions that places the health or safety of another other person at risk or involve academic dishonesty.

**Interim and Supportive Measures**

Interim and supportive measures are provided, as reasonably available, for complainants, respondents and witnesses pending the outcome of an investigation or hearing or following an investigation or hearing, and may include, but not be limited to, the following options:

- a. Academic accommodations
  - o Transferring to another section of a lecture or laboratory
  - o Rescheduling an academic assignment or test
  - o Accessing academic support (e.g., tutoring)
  - o Arranging for incompletes, a leave of absence, or withdrawal from course(s)
  - o Preserving eligibility for academic, athletic, or other scholarships, financial aid, internships, study abroad, or international student visas
- b. Medical and mental health services, including counseling
- c. Change in campus housing and/or dining locations
- d. Assistance in finding alternative housing
- e. Assistance in arranging for alternative University employment arrangements and/or changing work schedules
- f. Providing an escort to ensure that the student can move safely between school programs and activities
- g. Transportation and parking accommodations
- h. Assistance identifying an additional resources including off-campus support and services

**No Contact Orders**

Complainants, respondents, and witnesses may request a No Contact Order at any time to prevent unnecessary or unwanted contact or proximity to the other party, when reasonably available.

Individuals may request supportive measures (such as those listed above) following an investigation or hearing to aid in their continued academic success at the University.

**Reporting and Confidentiality**

The University can assist in providing complainants with support and assistance in assessing their options. The University also recognizes the importance of confidentiality during and after investigations and understands that individuals may want their identities to remain confidential. In some instances, the alleged respondent can be spoken to without the complainant being identified. In other cases, issues of confidentiality must be balanced against Chapman University's need to investigate and take appropriate action. Chapman University will respect the privacy and confidentiality of individuals involved in a sexual misconduct investigation to the fullest extent possible as permitted by State and Federal law.

**Privileged and Confidential Resources**

For complete confidential assistance, contact the individuals listed below. Privacy laws prohibit some of these individuals from disclosing your identity without your written permission with a few exceptions (i.e. in the case of a minor). These individuals can let you know what your reporting options are and provide resources and information.

- Dr. Dani Smith – Rape Crisis Counselor (714) 744-7080
- Student Psychological Counseling Services (SPCS) (714) 997-6778
- Rev. Dr. Gail Stearns (714) 628-7289
- Rev. Nancy Brink (714) 628-6706
- Frances Smith Center for Individual & Family Therapy (714) 997-6746

**Private (non-confidential) Resources**

Anyone may report an incident of sexual misconduct to any trusted faculty or staff member of the University.

Managers, supervisors, faculty, staff and any other agents of the University have a duty to report incidents of sexual

misconduct to a Title IX Coordinator, unless they are a confidential or privileged status person (listed above). Reports may also be made directly to any of the following resources:

**On Campus**

- Dr. DeAnn Yocum Gaffney – Associate Vice President for Student Affairs and Associate Dean of Students (714) 997-6721
- Chris Toutain – Program Coordinator for Student Conduct (714) 532-6039
- Kristen Entringer – Program Coordinator for Student Conduct (714) 532-6056
- Dean of Students Office (714) 997-6721
- Chapman University Public Safety (714) 997-6763
- Residence Life Staff
- Resident Directors
- Resident Advisors

**Off Campus** – Students are also encouraged to contact local police in the city of the incident and file a report (filing a police report is not necessary for filing a University report, nor is a University report necessary for filing a police report – students may choose to pursue one of the other, both, or neither)

- Orange Police Department (714) 744-7444
- Irvine Police Department (949) 724-7000

**Anonymous Reporting**

Individuals may submit a form filed anonymously in order to report incidents of sexual misconduct. An anonymous report does not require the disclosure of the name of the person making the report or the names of the individuals involved. However, individuals submitting anonymous reports should understand that while the University will do its best to address anonymous reports, it may be limited in its ability to investigate and otherwise respond to or address them. The anonymous report form is available at the following web address, and may be submitted to Public Safety, the CARES Coordinator, or the Dean of Students:

<http://www.chapman.edu/students/health-and-safety/peer/files/sexual-assault-form.pdf>

**Additional Resources:**

- Chapman University Harassment & Discrimination Complaint Hotline (877) 527-7533
- Chapman University Student Health Center & Jacqueline Deats – Dir. SPCS (714) 997-6851
- 24 hour CSP Hotline (714) 957-2737

For additional information about reporting, support services for students, contact persons, grievance and conduct procedures, and Title IX coordinators and compliance, please review the information at the links below:

Key contact persons and Title IX information

<http://www.chapman.edu/students/health-and-safety/title-ix.aspx>

Support Services and Rape Crisis Counseling

<http://www.chapman.edu/students/student-health-services/peer/index.aspx>

<http://www.chapman.edu/students/student-health-services/health-services/index.aspx>

<http://www.chapman.edu/students/student-health-services/psychological-counseling/index.aspx>

Equal Opportunity

<http://www.chapman.edu/faculty-staff/human-resources/eoo.aspx>

Conduct Policies and Procedures:

<https://www.chapman.edu/students/policies-forms/student-conduct/index.aspx>

Harassment and Discrimination Policy:

<https://www.chapman.edu/faculty-staff/human-resources/files/harassment-and-discrimination-policy.pdf>

Reporting Abuse or Neglect of Minors:

All incidents of suspected abuse or neglect of individuals under the age of 18 should be reported immediately to the Chapman University Department of Public Safety at 714-997-6763 and/or the Orange Police Department at 714-744-7444. A second report shall also be made to the Child Abuse Reporting Hotline at 714-940-1000 or 800-207-4464. These reports may be made 24 hours per day. If assistance is needed in making such a report, please do not hesitate to call the Department of Public Safety.