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 both partners to engage in sexual activity. Affirmative consent must be continuously present throughout an interaction, for all sexual activities, and may be revoked at any time. It is the responsibility of each person involved in the activity to ensure that he/she has the affirmative consent of the other or others to engage in sexual activity.
- **The existence of a dating relationship between the persons involved, or the fact of a past sexual relations between them, can never by itself assumed to be an indicator of consent.**
- Past consent does not constitute present consent.
- Equal partners requires individuals who have the capacity to consent.
- Voluntary means subject to modification or withdrawal at any time.
- 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 or drugs, 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 application of verbal, emotional, or physical manipulation to convince another person to do something he/she may not want to do, in this case to engage in sexual acts that the individual does not want to do. This includes tactics of post-refusal sexual persistence; in other words, verbally or physically persisting with a sexual act (attempting to wear him or her down) after the individual has already refused to participate in it. Coercing someone into having sex or performing specified sexual acts violates the boundaries of consent.

The intoxication of the respondent does not diminish his or her responsibility for an act of sexual misconduct. It is also important to note that 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 sexual or romantic behavior, attempted or completed, that goes beyond the boundaries of consent (as described above). Intoxication of the respondent does not diminish his or her 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:
  
o 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 of the jurisdiction.
  
o Dating Violence is defined as violence committed by a person who:
    ▪ (a) who is or has been in a social relationship of a romantic or intimate nature with the victim: and
    ▪ (b) where the existence of such a relationship shall be determined based on consideration of the following factors:
      • Length of the relationship
      • The type of the relationship
      • The frequency of interaction between persons involved in the relationship

  
o 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** – retaliating against anyone for exercising the right to report or make a complaint for any of the behaviors prohibited in the Sexual Misconduct policy. This includes attempts or threats of retaliation, 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 by force or by threats of bodily injury and involving penetration of a person’s genitalia 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** – touching without consent the sexual or other human parts of another, directly or through clothing, in order to gratify sexual desire or to cause injury, humiliate, harass, or degrade another.

• **Sexual Exploitation** – 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 of sexual activity or distribution of such; 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 a 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 a 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.

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**

Chapman University strongly advocates the reporting of sexual misconduct (including sexual assault, domestic abuse and violence, dating abuse and violence, stalking, and sexual harassment). To encourage and support the reporting of such matters, it is important to note that the complainant or any witnesses will not be held accountable for violations of the Code (including alcohol or illegal substances policies) that may have occurred at the time of or as a result of the incident in question, provided that these violations did not endanger others or are not egregious in nature or do not violate the academic integrity policy.

**Available Assistance**

At the request of the reporting person, interim or permanent changes can be made to help reduce the impact of any incident of sexual misconduct that may have occurred, including but not limited to institutional no-contact orders. Similar orders may be available to reporting persons as determined by a civil or criminal court, upon application by the reporting person. Adjustments can also be made to living, academic, transportation, or working situations at the request of the reporting person, when reasonably available, regardless of whether he or she wishes to file a formal complaint or report with Public Safety or local police.

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/dean-of-students/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:

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.