Policy Outline

I. CUI Policy

II. The Law

III. Sexual Misconduct
   A. Definitions
   B. Examples
   C. Consensual relationships and consent

IV. To File a Complaint
   A. How to
   B. Title IX staff
   C. Mandatory reporters
   D. Non-mandatory reporters

V. Complaint Process Overview
   A. Investigation
   B. Interim measures
   C. Time frame of process
   D. Hearings and appeals

VI. Resources for Assistance
   A. On and off campus
   B. University provided assistance

VII. Sanction Statement
I. CUI Policy

Concordia University, Irvine (CUI) fully subscribes to all federal and state civil rights laws banning discrimination for private, church affiliated institutions of higher education. CUI will not discriminate against any employee, applicant for employment, student or applicant on the basis of race, color, sex, pregnancy, national origin (including ancestry), citizenship status, physical or mental disability, age, marital status, gender, veteran or military status, predisposing genetic characteristics, domestic violence victim status, or any other protected category under applicable local, state or federal law. However, Concordia University, Irvine is a Christian educational institution operated by The Lutheran Church-Missouri Synod and, in compliance with Title VII of the Civil Rights Act of 1964, reserves the right to give preference in employment based on religion.

II. The Law

Gender discrimination and sexual harassment are prohibited by Title VII of the Civil Rights Act of 1964 as amended and Title IX of the Education Amendments of 1972.

III. Sexual Misconduct

It is the philosophy of Concordia University, Irvine that every student, staff, and faculty has the right to study, work, and live in an environment which is not hostile, offensive, or threatening. Violation of the policy on sexual harassment or sexual misconduct will result in disciplinary actions, which could include, but is not limited to, probation, academic/resident hall suspension or expulsion, or employment suspension or termination.

A. Definitions

1. Sexual misconduct offenses Include, but are not limited to . . .
   a. Sexual Harassment
   b. Non-Consensual Sexual Contact (or attempts to commit same)
   c. Non-Consensual Sexual Intercourse (or attempts to commit same)
   d. Sexual Exploitation
2. Sexual Harassment is . . .

- unwelcome, gender-based verbal or physical conduct that is,
- sufficiently severe, persistent or pervasive that it,
- has the effect of unreasonably interfering with, denying or limiting someone’s ability to participate in or benefit from the University’s educational program and/or activities, and
- is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

3. Non-Consensual Sexual Contact is . . .

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon a person,
- that is without consent and/or by force

4. Sexual Contact includes . . .

Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

5. Non-Consensual Sexual Intercourse is . . .

- any sexual intercourse
- however slight,
- with any object,
- by a person upon a person,
- that is without consent and/or by force
• Intercourse includes vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

6. Sexual Exploitation

Occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

• Invasion of sexual privacy;
• prostituting another student;
• non-consensual video or audio-taping of sexual activity;
• going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
• engaging in voyeurism;
• knowingly transmitting an STI or HIV to another student;
• Exposing one’s genitals in non-consensual circumstances; inducing another to expose their genitals;
• Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

7. Additional Applicable Definitions

• Consent: Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts.
• **Force**: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).

  o Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

  o **NOTE**: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

  o In order to give effective consent, one must be of legal age.

  o Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy. Use of alcohol or other drugs will never function as a defense to a violation of this policy.

• Incapacitation is 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 their sexual interaction).

• This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another person is a violation of this policy. More information can be found at http://www.911rape.org/
Policies apply to sexual misconduct that occurs both inside and/or outside a University program, if the conduct negatively affects a victim’s school experience or the overall school environment.

B. Examples include:

- an attempt to coerce an unwilling person into a sexual relationship
- to repeatedly subject a person to egregious, unwelcome sexual attention
- to punish a refusal to comply with a sexual based request
- to condition a benefit on submitting to sexual advances
- sexual violence; intimate partner violence, stalking; gender-based bullying.
- unwelcomed physical touching
- unwelcomed remarks about a person’s body
- an employee asking for sexual favors with promise of a reward or punishment
- sexually suggestive jokes or innuendos
- sexual assault or coerced sexual activity
- posting obscene remarks/images of another on social media sites

C. Consensual Relationships and Consent

As Christians, we view sex as part of our total personality and part of the total context of life. However, God in His Word forbids sexual union or intercourse outside of the marriage relationship. Therefore, in any unmarried relationship individuals involved should get to know one another as total persons—not just as physical beings. This means developing a relationship that is emotional, social, spiritual and has the consent of both parties. Nonconsensual physical behavior is inappropriate, unhealthy and against God’s Word. Any physical/sexual behavior cannot be consented to under any of the following conditions:

The person is under the influence of drugs or alcohol, a minor (age of consent in California is 18 years of age), mentally impaired, bullied, coerced or threatened, asleep or unconscious.
IV. To File A Complaint

A. How to file a complaint

• Complaints may be filed with the Title IX Coordinator, the Assistant Title IX Coordinator, or any university employee identified as a mandatory reporter. All sexual misconduct complaints made to mandatory reporters will be reported to the Title IX Coordinator staff.

• CUI encourages those who have experienced any form of sex discrimination/sexual misconduct to report the incident promptly, to seek all available assistance as described in this brochure, and to pursue University conduct charges and criminal prosecution of the offender. CUI takes complaints very seriously and will work with victims to ensure their safety. Contact Campus Safety at (949) 214-3000 (Admin 103) and/or the CUI Title IX Coordinator (see contact info below). You may also contact any of the offices listed below.

B. Title IX Staff

• Questions about Title IX can be directed to the Title IX Coordinators or to the Office of Civil Rights (OCR, http://www2.ed.gov/about/offices/list/ocr/index.html) of the U.S. Department of Education. The Title IX Coordinator has additional staff to ensure there are no conflicts of interest when responding to complaints. The Title IX Coordinator staff is available to meet with students, faculty, and staff who believe sexual harassment or sexual violence has occurred.

• Title IX Coordinator

Dr. Gilbert Fugitt, gilbert.fugitt@cui.edu
(949) 214-3057 (Admin 300B)

• Director of Student Conduct:

Karyn Pace, karyn.pace@cui.edu
(949) 214-3050 (Admin 308)
C. Mandatory Reporters

CUI employees who hold a professional license who are not employed by CUI as a counselor, health service provider, LCMS minister, or Campus Ministry professional are considered mandatory reporters. A mandatory reporter must report all allegations of sexual misconduct to a member of the Title IX Coordinator staff.

D. Non-Mandatory Reporters

Students, faculty, and staff may wish to seek confidential assistance in dealing with a Title IX violation. The University has identified the following employees who will maintain confidentiality under the professional license or professional ethics necessary for performing their employed role at the University. Please see the CUI Title IX webpage for a list of those who may keep the report confidential.

VI. Complaint Process Overview

These procedures apply to student, staff, and faculty complaints of sexual misconduct against other students, employees or third parties.

The University will respond to allegations of sexual misconduct, including taking interim measures such as a “no contact” order between the parties, interim suspension, room reassignment, academic accommodations and/or counseling. The University prohibits retaliation against complainants and anyone participating in an investigation. If an allegation of sexual misconduct involves an athlete, someone outside the athletic department oversees the grievance process. Mediation cannot be used for sexual harassment or non-consensual sexual contact/intercourse cases.

A. Investigation

CUI will investigate all incidents of sexual misconduct of which it becomes aware, regardless of whether a complaint is filed. A Title IX Coordinator will appoint an investigator team. The investigation of a non-consensual sexual contact/intercourse allegation will proceed whether or not a related criminal matter is pending. The University will ask the complainant(s) and alleged perpetrator(s) for a written acknowledgment of the incident(s).
CUI will inform complainants that all investigations will be kept as private as possible and that information is disclosed only on a “need to know” basis. The University will explain to a complainant that anonymity may limit the institution’s ability to investigate and respond. The University is obligated to investigate the matter to the best of its ability even if a complainant asks the institution not to take any action.

In cases of alleged non-consensual sexual contact/intercourse, CUI will inform complainants of their right to file criminal charges. The University will not discourage complainants from filing criminal charges.

The University will treat the parties equitably. For reports involving non-consensual sexual contact/intercourse, the University must notify the police. Also, to insure the highest standard of care for the victim, the University will notify Advocates of Orange County; the advocate assigned will maintain confidentiality. The University emphasizes the importance of seeking immediate medical attention for non-consensual sexual intercourse.

The investigators will make a report to the Title IX Coordinator staff with an opinion as to whether it appears that a violation of the sexual misconduct policy occurred. The Title IX Coordinator will review the report and, when appropriate, refer the report to the student conduct system (for students) or Human Resources (for employees).

Members of the campus community should consult one of the appropriate policy documents below:

- **Students:** For specific information about the grievance process consult the Student Conduct Code (CUI portal, student service tab, essential student documents).

- **Employees:** For specific information about the grievance process consult the Employee Handbook (CUI portal tab, employee tab, employee handbook).

B. Interim Measures

Options are available for avoiding contact with alleged perpetrators, including taking interim measures such as a “no contact” order between the parties, interim suspension, room reassignment, academic accommodations and/or counseling.
C. Time Frame

Concordia will conduct a full investigation of complaints of sexual misconduct. In accordance with federal regulations, Concordia will complete investigations within a 60-day time period. Both parties will be provided periodic updates during the grievance process. Both parties will be advised in writing of the outcome of a complaint once a decision has been reached. Either party may appeal the results of a hearing. Complaints may be resolved through formal or informal resolution procedures.

D. Hearing and Appeals

CUI balances the rights of alleged perpetrators with complainants’ Title IX rights in disciplinary hearings involving sexual misconduct. The standard used in disciplinary hearings related to sexual misconduct is preponderance of the evidence/what is more likely than not to have occurred.

Both parties will be given similar and timely access to any information that will be used at the hearing. Both parties will be given the same opportunity to present relevant evidence and witnesses, including character witnesses. Both parties will receive simultaneous written notice of the outcome of the hearing and of any appeal process.

CUI requires disclosure of any conflicts of interest between a party and the fact-finder or decision-maker at a hearing. Parties are prohibited from personally questioning each other at the hearings. Within the appeal process, both parties have the same appeal rights.

In cases of alleged sexual misconduct, CUI will disclose the results to both parties regardless of whether it concludes misconduct was committed. CUI will disclose to a victim of sexual misconduct any sanction imposed on the perpetrator that relates directly to the victim, such as a “no contact” order, transfer to different classes or reassignment/cancellation of housing, a suspension, or a termination.

CUI will follow up with complainants to ask if they have experienced retaliation or any further incidents.
V. Resources for Assistance

A. Some health care and counseling services, available both on and off campus, include the following:

- **Campus Ministry Staff:**
  
  Rev. Quinton Anderson, campus pastor: (949) 214-3111

- **Wellness Center:**
  
  Michelle Laabs, Director of Health Services: (949) 214-3102
  Rebecca Kindreich, Director of Counseling Services: (949) 214-3102

- **Campus Safety Office:**
  
  Steven Rodriguez, Director of Campus Safety: (949) 214-3003.

- **Rape Crisis Hotline—24 Hour Counseling:** (949) 831-9110

- **Sexual Assault Victim Services for South Orange County:** (949) 752-1971

B. University Provided Assistance

Counseling and Campus Ministry staffs stand ready to assist any member of the University community who needs help dealing with a sexual misconduct situation (see contact information above). Also, as stated above, Sexual Assault Victim Services for South Orange County can assist you in a caring confidential manner.

Benefit eligible employees also have an opportunity to utilize the Employee Assistance Program (EAP). All EAP services are free, confidential, and available to all covered members and dependents. The services can be accessed 24 hours a day, 7 days a week, at www.cignabehavioral.com or by calling toll-free at 866-726-5267.

Please Note: Both parties (complainant and accused) may select one individual from the University community (faculty or staff) to advise him/her throughout the process. For students, this advisor may be one or both parents instead of a member of the University community. Either party may request the Title IX Coordinator to assign an advisor from the University community to advise him/her throughout the process.
VI. Sanction Statement

• Any person found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*

• Any person found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.*

• Any person found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*

*The conduct body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.