

## Sexual Misconduct Policy

### 1. Statement of Intent

Fairfield University (“University”) is committed to providing a learning environment free of gender-based discrimination, including sexual harassment. Sexual misconduct is a form of sexual harassment prohibited by this policy. This policy is intended to guide students on the University’s general response policy to incidents of sexual misconduct, the resources available to victims of sexual misconduct, and the sexual misconduct prevention initiatives of the University.

### 2. Title IX Compliance Notice

The University does not discriminate on the basis of sex in its educational programs and activities and Title IX requires that it not discriminate in such a manner. Sexual misconduct is a form of gender-based discrimination prohibited by both this policy, Title IX, and other federal and state laws.

Inquiries concerning the application of Title IX may be made to the University’s Title IX Compliance Coordinator/Investigator. Consistent with Title IX, Fairfield University has designated Terry Quell as Title IX Compliance Coordinator.

Theresa T. Quell, Ph.D., MSN, RN '79  
Assistant Dean for Academic Programs &  
Undergraduate Program Director, School  
of Nursing  
Phone: (203) 254-4000, ext. 2704  
E-mail: tquell@fairfield.edu

William Johnson is the Title IX Compliance Investigator.

William Johnson  
Associate Dean of Students/Director of  
Student Diversity Programs  
Phone: (203) 254-4000, ext. 2890  
E-mail: wjohnson@fairfield.edu

### 3. Definitions

For purposes of this policy, the following terms shall be defined accordingly:

“Consent” shall mean mutually understandable words or actions indicating a willingness to do the same thing, at the same time, in the same way with each other. Mutually understandable consent is

almost always viewed under an objective, reasonable person standard. The only context in which mutually understandable consent would be viewed under a subjective standard is in the instance of a long-standing relationship where a couple have established patterns of communicating consent, but even then there must still be evidence of free and knowing participation to establish consent. Effective consent is informed consent which is freely and actively given. Consent which is obtained through the use of fraud, force (actual or implied), threats, intimidation, or coercion is ineffective consent. Consent may never be given by a minor (in Connecticut, those not yet 18 years of age). Mentally disabled persons cannot give effective consent to sexual activity. Physically incapacitated persons cannot give consent. One who is physically incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary) or who is unconscious, unaware, or otherwise physically helpless, is incapable of giving consent.

“Force” shall mean the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation, implied threats, and coercion. There is no requirement that an individual resist the sexual advance or request, but the presence of resistance is a clear demonstration of non-consent.

“Intercourse” shall mean 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.

“Sexual Contact” shall mean intentional contact with the breasts, buttocks, 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; and intentional bodily contact in a sexual manner even if not involving contact with, of, or by breasts, buttocks, groin, genitals, mouth, or other orifice.

### 4. Offenses and Jurisdiction

Non-consensual sexual contact, non-consensual sexual intercourse, sexual exploitation, attempted offenses, child abuse and neglect, and retaliation shall be offenses prohibited by this policy. The elements of each such offense are:

**a. Offenses**

1. **Non-Consensual Sexual Contact:** The elements of the offense of non-consensual sexual contact are:
  1. any intentional sexual touching,
  2. however slight,
  3. with any object,
  4. by a person upon a person,
  5. that is without consent and/or by force.
2. **Non-Consensual Sexual Intercourse:** The elements of the offense of non-consensual sexual intercourse are:
  1. any sexual intercourse,
  2. however slight,
  3. with any object,
  4. by a person upon a person,
  5. that is without consent and/or by force.
3. **Sexual Exploitation:** The elements of sexual exploitation are:
  1. Non-consensual, unjust, or abusive sexual advantage of another
  2. for the benefit of:
    - a. the person taking advantage, or
    - b. any person other than the one being exploited,
  3. where the 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, prostitution of self or another, videotaping without knowledge and consent of all parties, peeping tommery, transmission of HIV or STD, exposure of one's genitals in non-consensual circumstances, engaging in voyeurism, sexually based stalking or bullying, or inducing incapacitation with the intent to rape or sexually assault, regardless of whether sexual activity actually takes place.
4. **Child Abuse and Neglect:** Connecticut law defines child abuse and neglect as follows: Child abuse occurs where a child has had physical injury inflicted upon him or her other than by accidental means, has injuries at variance with history given of them, or is in a condition resulting in maltreatment, such as, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment, or cruel punishment. (Connecticut General

Statutes §46b-120). Child neglect occurs where a child has been abandoned; is being denied proper care and attention physically, emotionally, or morally; or is being permitted to live under conditions, circumstances, or associations injurious to his/her well being. (Connecticut General Statutes §46b-120).

5. **Attempted Sexual Misconduct:** It is a violation of this policy to attempt to commit an offense of Non-Consensual Intercourse, Non-Consensual Sexual Contact, or Sexual Exploitation.
6. **Retaliation:** It is a violation of this policy to retaliate against anyone who reports (or may report) an incident of sexual misconduct, or who pursues (or may pursue) a complaint of sexual misconduct, or is (or may be) a witness to an incident of sexual misconduct, or otherwise is (or may) otherwise participate in any sexual misconduct investigation and/or disciplinary proceeding.

**b. Jurisdiction**

The University's disciplinary jurisdiction is limited to conduct which occurs on campus and certain off-campus conduct. Off-campus conduct falls within the scope of this policy when the University determines that such conduct is sufficiently serious that it interferes with, or limits, a student's ability to participate in or benefit from the University's educational programs or activities. Examples of off-campus conduct which the University may exercise jurisdiction over include, but are not limited to, off-campus parties and school-sponsored programs at off-campus locations and travel associated therewith.

**5. Incident Reporting**

A student in immediate danger should get to a safe place and call the Department of Public Safety at ext. 4090 or dial 911 for the Fairfield Police Department. Similarly, students hurt and in need of medical attention should call Public Safety at ext. 4090 or dial 911. It is important to preserve evidence when reporting sexual misconduct. If possible, students should not shower or wash their clothing following sexual misconduct as that may aid in the investigation.

- a. **Role of the Department of Public Safety and Title IX Compliance Coordinator/Investigator**
  - i. **Department of Public Safety**  
The Department of Public Safety is the University's first responder to reports of crime on

campus and will provide immediate assistance to a person reporting an act of sexual misconduct. Services available through the Department of Public Safety include:

- Emergency response
- Incident documentation
- Victim support
- Referral to victim resources and services

The Department of Public Safety is not itself a police department. The Department of Public Safety will inform the victim that the local police department is the vehicle through which they may pursue a criminal investigation. Whenever the Department of Public Safety receives a report of sexual misconduct, the Department of Public Safety will independently contact the Fairfield Police Department. That does not require the victim to pursue a criminal investigation. Further, the Department of Public Safety will notify the Title IX Compliance Coordinator/Investigator of the reported incident.

ii. Title IX Compliance Coordinator/Investigator

The role of the Title IX Compliance Coordinator/Investigator includes:

- Promoting Title IX compliance policies, procedures and notifications
- Overseeing implementation of compliance (grievance) procedures
- Conducting investigations of sexual misconduct complaints
- Providing guidance on Title IX compliance and University's related policies/procedures
- Serving as a liaison to the state and federal agencies that enforce Title IX
- Promoting employee training and education on Title IX compliance
- Monitoring all other aspects of the University's Title IX compliance.

Consistent with Title IX, Fairfield University has designated Terry Quell as Title IX Compliance Coordinator.

Theresa T. Quell, Ph.D., MSN, RN '79  
 Assistant Dean for Academic Programs  
 & Undergraduate Program Director, School  
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When an act of sexual misconduct is reported to the Department of Public Safety, the matter will be referred to the Title IX Compliance Coordinator/Investigator. The Title IX Compliance Coordinator/Investigator will contact the victim to explain their options, services, and resources available to them on and off campus. Further, as discussed in more detail below, the Title IX Compliance Coordinator/Investigator will assist the victim with filing a Title IX Sexual Misconduct Complaint.

b. Reporting Sexual Misconduct

This policy on reporting is designed to assist the University's Title IX Compliance Coordinator/Investigator, in conjunction with the Department of Public Safety, in providing a comprehensive response to reports of sexual misconduct. It seeks to promote victim and campus safety, and a prompt and equitable resolution to incidents of sexual misconduct. In general, any employee who has reasonable cause to believe sexual misconduct has occurred, must comply with the University's Sexual Misconduct Policy, regardless of the age of the victim.

i. Reporting by University Employees

When the victim is under 18: In instances where a University employee is made aware of child abuse or neglect as defined by Connecticut General Statutes Section 17a-101b, the first question the employee must ask herself/himself is whether she/he is a mandated reporter of child abuse or neglect as defined by Connecticut General Statutes Section 17a-101(b). If the employee is a mandated reporter she/he must comply with Connecticut's mandated reporting laws.

When a mandated reporter is made aware of child abuse or neglect (as defined above and by Connecticut General Statutes Section 17a-101(b)), she/he must call the Department of Children and Families (DCF) 24-hour hotline for reporting suspected child abuse or neglect at 1(800) 842-2288. All employees, including

mandated reporters, must also report the matter to the Department of Public Safety (ext. 4090) and the Fairfield Police Department (911).

All other University employees (i.e., those who are not mandated reporters) are strongly encouraged to report suspected child abuse or neglect to the DCF hotline listed above, and are protected under Connecticut law for good-faith reporting of such suspected child abuse or neglect, even if later investigation fails to substantiate abuse or neglect. Employees who are mandated reporters must still report instances of child abuse or neglect to the Department of Public Safety (ext. 4090) and the Fairfield Police Department (911).

When the victim is 18 or older: Any employee, except those who are empowered by law to maintain confidentiality, who witnesses or receives a report of sexual misconduct of a victim 18 or older, must report the incident (including the date, time, and location of the incident, the date the incident was reported to them, and the identities of the victim and, if disclosed, the alleged perpetrator) as soon as possible to the Department of Public Safety at ext. 4090. The Department of Public Safety will notify the Title IX Compliance Coordinator/Investigator and the Fairfield Police Department.

While University employees must report information they receive, it is not their responsibility to investigate or confirm what is reported to them. University officials within the appropriate offices will determine the appropriate next steps, including ensuring that victims have been made aware of available on- and off-campus resources.

While a University employee may advise the victim of sexual misconduct that any conversation they have with the victim will be private (will not be shared unnecessarily with others), they may not tell a victim that the conversation will be confidential unless that employee is subject to privilege by law to maintain confidentiality of an adult victim.

The law extends to a limited number of University employees the privilege to offer confidentiality to the adult victim and not to disclose communications with the victim. Typically,

these are clinical employees who work within the Office of Counseling & Psychological Services, the Student Health Center, or clergy within Campus Ministry. Others accorded this privilege include: 1. licensed marital and family therapists; 2. licensed social workers; 3. licensed professional counselors; 4. licensed psychologists; 5. psychiatrists licensed as physicians and substantially acting as psychiatrists; and 6. physicians and other medical professionals acting within a medical professional/patient relationship, including those recognized by the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA).

#### ii. Self Reporting

Victims of sexual misconduct are strongly encouraged to file a standard, formal incident report with the Department of Public Safety. An incident report will include, among other things, the name of the victim and the name of the alleged offender, if known. Upon the filing of an Incident Report, the Department of Public Safety will act as first responder as detailed in this policy and refer the matter to the Title IX Compliance Coordinator/Investigator for investigation. The Department of Public Safety will also determine whether law enforcement or other authorities should be notified.

A victim who directly reports sexual misconduct has the opportunity to be in greater control of the situation and may feel a greater sense of empowerment. Direct reporting also can be important for the safety of the entire University community. Victims have the right to report sexual misconduct to the Department of Public Safety without further participation in the investigatory process. A victim can choose to initiate a criminal complaint through law enforcement and/or initiate a Title IX Sexual Misconduct Complaint with a Title IX Compliance Coordinator/Investigator. Victims should understand, however, that by choosing to not participate in the University's disciplinary process, the University's response to the incident may be limited.

Reports of sexual misconduct can also be made anonymously with the Department of Public Safety, meaning that the report does not contain the name of the victim or the offender.

An Anonymous Report will be kept in the file of the Department of Public Safety and recorded with the Fairfield University Department of Public Safety for purposes of the Jeanne Clery reporting disclosure requirements. Anonymous Reports allow Fairfield University to track reported incidents of sexual misconduct and to provide the victim with information about options and resources available to her/him. An Anonymous Report does not constitute a formal Incident Report, a Police Report, or a Title IX Sexual Misconduct Complaint.

Victims of sexual misconduct are also encouraged to contact the Fairfield Police Department directly by calling 911. Filing a criminal report with the Fairfield Police Department is different than filing an incident report with the Fairfield University Department of Public Safety. If a student files a criminal report with the Fairfield Police Department, the police will determine if a criminal investigation will occur and if the case will be referred for prosecution.

## 6. Title IX Sexual Misconduct Complaint, Investigations, and Disciplinary Proceedings

### a. Title IX Sexual Misconduct Complaint

A Title IX Sexual Misconduct Complaint is in effect a request by a victim for the University to investigate an alleged incident of sexual misconduct and to take disciplinary action against the accused. A Title IX Sexual Misconduct Complaint may be filed with a Title IX Compliance Coordinator/Investigator. A Title IX Compliance Coordinator/Investigator will assist a victim procedurally in filing a complaint, and will let them know their options as well as the services and recourse which are available to them on and off campus. A Title IX Sexual Misconduct Complaint is independent of an Incident Report filed with the Department of Public Safety. A Title IX Sexual Misconduct Complaint is an invocation of the student's right to have the incident handled through University disciplinary proceedings, while an Incident Report alerts the Department of Public Safety of alleged sexual misconduct and to provide first responder assistance to a victim of sexual misconduct. A Title IX Sexual Misconduct Complaint can be filed with a Title IX Compliance Coordinator/Investigator at any time. While it is the victim's choice whether or not to file a Title IX Sexual Misconduct Complaint, victims are

encouraged to do so.

A victim may also file a complaint with law enforcement. When requested, a member of the Department of Public Safety will accompany a victim to the police and will assist in filing a report with the police.

### b. Title IX Investigations

A Title IX Compliance Coordinator/Investigator will conduct a prompt, thorough, and impartial investigation into all incidents of sexual misconduct they are made aware of. The investigation conducted by a Title IX Compliance Coordinator/Investigator is independent from any investigation by law enforcement; however, a Title IX Compliance Coordinator/Investigator will look to coordinate with law enforcement to access their investigative findings to supplement their fact gathering efforts.

The specific investigatory steps taken by a Title IX Compliance Coordinator/Investigator will vary depending upon the nature of the allegations of sexual misconduct among other factors. A typical Title IX Sexual Misconduct investigation may include:

- Interviewing and taking statements from the victim, the accused, and any witnesses
- Compiling and verifying statements
- Gathering/obtaining documentation
- Reviewing any physical evidence
- Conducting appropriate research
- Drafting reports
- Taking statements from the complainant and the accused

A Title IX Compliance Coordinator/Investigator will inform the victim if he/she receives a report of sexual misconduct from a third-party (e.g., the Department of Public Safety or University employee) and seek to obtain the victim's consent to investigate the incident before commencing the investigation. If a victim of sexual misconduct makes a request for confidentiality or a request not to investigate, a Title IX Compliance Coordinator/Investigator will take all reasonable steps to investigate and process the matter consistent with the victim's request. In all cases in which a victim requests that their name and other identifiable information not be disclosed to the alleged perpetrator, the University will evaluate the request in context of its obligation to provide a safe non-discriminatory environment for all students. In weighing the victim's request, the University will con-

sider such factors as the seriousness of the alleged sexual misconduct, the victim's age, whether there have been other complaints against the accused, and the accused's right to receive information about allegations against him or her. The University retains the discretion to disclose, among other things, a victim's name and other identifiable information, as may be necessary to conduct their investigation. In such cases, a Title IX Compliance Coordinator/Investigator will inform the victim if he/she cannot maintain confidentiality.

Typically, the fact finding portion of the investigation will be concluded within 60 days of the filing of a Title IX Sexual Misconduct Complaint and/or receipt of notice of an incident of sexual misconduct. However, the timeframe may vary depending upon the complexity of the investigation, unavoidable delays, and/or the severity and extent of the sexual misconduct. At the conclusion of a fact finding portion of the investigation, the Title IX Compliance Coordinator/Investigator will share their findings with the Office of the Dean of Students. Based on the findings of the investigation, the Office of the Dean of Students will decide whether to pursue charges under the Student Code of Conduct.

### c. Disciplinary Process and Proceedings

Fairfield University will initiate disciplinary proceedings under the Code of Conduct set forth in the Student Handbook, which can be found at [www.fairfield.edu/studenthandbook](http://www.fairfield.edu/studenthandbook), upon the conclusion of the fact finding portion of the investigation and recommendation of the Office of the Dean of Students to pursue charges. The disciplinary procedures will be conducted in a manner consistent with Title IX requirements and protections.

University procedures are designed to provide a prompt, impartial response for resolution of Title IX Sexual Misconduct Complaints, as well as to provide reasonable remedial measures if it is determined that the sexual misconduct policy has been violated. The University reserves the right to pursue disciplinary proceedings against an accused even if a victim does not file a Title IX Sexual Misconduct Complaint. Further, reasonable interim (pre-disciplinary hearing) corrective actions for the benefit of the victim will be made available to a victim as well. Remedial corrective actions include, but are not limited to, no-contact orders, on-campus housing changes, escorts, ensuring the victim and accused do not attend the same classes, counseling services, medical services,

academic support services, etc. When providing a victim with remedial corrective options, a Title IX Compliance Coordinator/Investigator will seek to minimize the burden on the victim as much as is reasonably possible.

It should be noted that while the Code of Conduct and procedures on sexual harassment do provide voluntary informal mediation of complaints, mediation is generally not considered an appropriate process for responding to sexual misconduct complaints, and in such cases in which mediation may be appropriate, the victim has a right to end the mediation process at anytime and begin a formal complaint process.

In most circumstances where sexual misconduct is alleged, both the victim and the accused will meet separately with a Title IX Compliance Coordinator/Investigator and will be provided with a written statement setting forth the rights both parties have when going through the disciplinary process. After reviewing the written statement, both the victim and the accused can ask questions of the Office of the Dean of Students and have the hearing process explained in greater detail. Both the victim and the accused are entitled to opportunities to present relevant statements and witnesses during a formal conduct proceeding.

When the hearing is held, all appropriate steps will be taken to ensure both a full and fair examination of the evidence, as well as the protection of the rights and safety of the victim. The standard of proof for these cases is more likely than not (also known as a preponderance of the evidence standard), and the definitions as well as the description of consent as used herein shall apply.

The hearing process typically is concluded within 30 days from the date the Office of the Dean of Students makes a recommendation to initiate disciplinary proceedings. A notice of outcome will be sent to both the victim and the accused within two business days of the conclusion of the disciplinary hearing. When a determination of responsibility is made, the victim will be notified of the decision as well as sanctions assigned. In cases of sexual misconduct, the typical sanction is dismissal or expulsion, as well as no-contact orders.

## 7. Education and Other Preventative Initiatives

The University is committed to the prevention of sexual misconduct through education and awareness.

Throughout the year, programs designed to promote sexual violence awareness and prevention are presented by a variety of campus resources including New Student Programs, the Dean of Students Office, Counseling & Psychological Services, Campus Ministry, and the Department of Public Safety. The University also promotes participation of student groups in prevention activities, through training provided in Residence Life, Athletics, and the Department of Recreation, among others. Prevention programs stress the added risks involved when the use of alcohol and/or illegal drugs is present. Flyers about sexual violence are posted in residence halls. The educational programs review strategies for prevention and inform students of options and resources available should such violence occur.

Under the Jeanne Clery Act, the University issues warnings to the campus community regarding crimes that pose a serious ongoing threat to students and employees in a manner that is timely and will aid in the prevention of similar occurrences. The Department of Public Safety is responsible for evaluating reported crimes to determine if a timely warning is appropriate. Reported cases of sexual violence may require such a warning if the circumstances of the incident suggest that there is a serious or continuing threat to the safety of the campus community. Whether to issue such an alert is considered on a case by case basis and depends upon a number of factors including the continuing danger to the campus community, whether the perpetrator was apprehended and the possible risk of compromising law enforcement efforts. Timely warnings never include the name of the victim, and the issuance of the timely warning will be explained to the victim by the Title IX Compliance Coordinator/Investigator.

Victims of sexual misconduct may also be eligible to obtain a protective order or apply for a temporary restraining order or seek enforcement of an existing protective order issued by a court of competent jurisdiction. Fairfield University will honor any lawful protective or temporary restraining order.

## 8. Resources

Many services, both on and off campus, are available to victims of sexual misconduct. One goal of this policy is to ensure that victims who reports to any University employee are made aware of and receive necessary or desired services.

### On-Campus Resources:

- Public Safety  
(203) 254-4090
- Title IX Sexual Assault Compliance Coordinator  
(203) 254-4000 ext. 2704
- Office of the Dean of Students  
(203) 254-4211
- Campus Ministry  
(203) 254-4000 ext. 3405
- Counseling & Psychological Services  
(203) 254-4000, ext. 2146
- Student Health Center  
(203) 254-4000, ext. 2241
- Residence Life  
(203) 254-4215

### Off-Campus Resources:

- Center for Women and Families  
(203) 334-6154
- Bridgeport Rape Crisis Center Hotline  
(203) 333-2233
- Fairfield Police Department  
911 or (203) 254-4800
- Bridgeport Hospital  
(203) 384-3566
- Connecticut Office of the Victim Advocate  
(860) 550-6632

## Special Accommodations Policy

Students who wish to request special accommodations due to a disability should notify the Office of Disability Support Services with the specific request. The Office of Disability Support Services receives requests, reviews documentation, and works closely with many offices and departments on campus (depending on the nature of the request) to facilitate accommodations for students with disabilities who have specific needs. In addition, a Special Accommodations Evaluation Committee works under the guidance and auspices of the Director of the Office of Disability Support Services. At the direction and request of the director, the Committee provides communication and coordination among student support services as well as provides consistent services to students with specific requests within and outside the scope of disability. The Special Accommodations Evaluation Committee will serve as a clearinghouse and repository for special requests made by students, with a specific focus on issues relating to first-year students and sophomore parking, room assignments, and room accessibility.