

**University Policy 4.02.04****Discrimination, Harassment, and Assault****Policy Revision Approval Date: June 6, 2017****Policy Revision Effective Date: July 1, 2017****Procedure Approval Date: June 30, 2017****Procedure Effective Date: July 1, 2017****POLICY STATEMENT**

Capella University does not discriminate on the basis of race, creed, national origin, religion, age, gender, gender identity or expression, disability, sexual orientation, marital status, veteran status, status with regard to public assistance; or in its admission, enrollment, or employment policies or practices. Capella University prohibits the discrimination, harassment, or assault of any members of the university community and any retaliatory behavior related to reports of such conduct. This policy applies to alleged discrimination, harassment, consensual relationships, assault, or related retaliation against learners.

**RATIONALE**

Capella University is committed to providing an environment free of discrimination, harassment, and assault. This policy establishes the definitions, procedures, prohibited conduct, and sanctions necessary for maintaining the desired environment.

**DEFINITIONS**Assault

Assault is the commission of an act with the intent to cause fear in another of immediate bodily harm or death, or the intentional infliction or attempt to inflict bodily harm upon another. Sexual assault is forced sexual activity without the expressed consent of both parties, or against a person incapable of giving consent, and includes but is not limited to threat of sexual assault, sexual battery, forced oral copulation, forced sodomy, rape, acquaintance rape, and rape by a foreign object. Domestic violence, dating violence, and stalking also constitute sexual assault.

Community

Community includes all Capella learners, faculty, administrators, staff, contracted workers, and others who participate in any Capella-related activities, including but not limited to fieldwork, practicum, and internship.

Consensual Relationship

A consensual relationship is a voluntary romantic or sexual relationship between a learner and a Capella employee or agent who is in a position of authority with respect to the learner.

Dating Violence

Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined

based on the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

### Discrimination

Discrimination is the segregation, separation, or disparate treatment of individuals based on race, creed, national origin, age, gender, gender identity or expression, religion, disability, sexual orientation, marital status, veteran status, or status with regard to public assistance.

Discriminatory practices include any instances of treatment or behavior that interfere with an individual's full participation in the university community, such as discouraging course participation or other activities designed to inhibit progress in a program of study.

### Domestic Violence

Domestic violence is any felony or misdemeanor crime(s) of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under domestic or family violence laws.

### Harassment

Harassment encompasses any unwanted behavior that results in a hostile environment.

### Hostile Environment

A hostile environment is an objectively hostile or abusive university setting caused by severe and pervasive harassment.

### Prohibited Conduct

Prohibited conduct includes consensual relationships, dating violence, domestic violence, discrimination, harassment, sexual harassment, stalking, and retaliation, as defined in this policy, provided that conduct either a) occurs at a Capella University facility, office, internet courseroom, or vehicle; b) occurs at or in connection with a course or other university-sponsored event; or c) is alleged to have created a hostile environment in a courseroom or other university-sponsored event.

### Respondent

The respondent is the person alleged to have engaged in prohibited conduct.

### Retaliation

Retaliation is an adverse action taken in retribution for one's reporting, supporting, or participating in an investigation related to an allegation of prohibited conduct, where the allegation is made in good faith.

### Sanction

A sanction is a disciplinary action that may result from prohibited conduct. Disciplinary action against learners may include one or more of the following: a) formal written warning; b) mandated remedial activity; c) suspension from the university; d) dismissal from a program; e)

dismissal from the university; f) cancellation of a previously-awarded academic credit or degree; or g) in cases where the prohibited conduct relates to the offending learner's academic submission: i) non-acceptance of work submitted; ii) failing an assignment; iii) lowering a grade for a course; or iv) failing a course. This list of possible sanctions is neither progressive nor exhaustive, and Capella University reserves the right to assess sanctions on a case-by-case basis. Disciplinary action against Capella employees related to alleged prohibited conduct committed against learners shall be determined according to Capella's Human Resources policies, located on Stella and in the *Employee Handbook*.

### Sexual Harassment

Sexual harassment includes unwelcome sexual advances, sexual assault, requests for sexual favors, and other verbal or physical conduct of a sexual nature, including but not limited to the following:

- Conduct that interferes with an individual's academic performance, or creates an intimidating, hostile, or offensive academic environment.
- Unwelcome, unnecessary, or coerced touching, kissing, grabbing, hugging, cornering, or other physical contact that is of a sexual nature or is sexually motivated.
- Unwanted sexual compliments or comments.
- Demand for sexual favors accompanied by implied or overt threats concerning employment, grades, compensation, tangible benefits, or recommendations.
- Unequal academic or employment performance standards, discipline, or work regulations because of sex.
- Deliberate or careless use of offensive or demeaning language that has a sexual connotation.
- Deliberate or careless dissemination of materials such as cartoons, articles, pictures, or graffiti that have sexual content, which are not necessary for the academic environment, and which are offensive to learners or employees.

### Stalking

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

### Summary Suspension

Summary suspension is the immediate suspension of a learner. Summary suspension is a temporary status during which a learner is prohibited from engaging in identified university activities while an evaluation of the prohibited conduct is being completed.

### Suspension

Suspension is a university-initiated temporary status during which a learner is denied access to the courseroom and prohibited from engaging in university activities until stated conditions have been met.

### University Administrator

A university administrator is a university employee who holds a position of responsibility at a supervisory or managerial level, or higher. For purposes of faculty, “university administrator” refers to a faculty member holding the position of faculty chair or higher.

### University Statutory Designee

The university statutory designee is the person or persons designated under Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act, and the Age Discrimination Act as the employee(s) primarily responsible for coordinating Capella University’s efforts to comply with said statutes. Unless otherwise indicated by Capella University, the university statutory designee shall be the university’s compliance analyst.

## **PROCEDURES**

- I. Reporting of Suspected Prohibited Conduct
  - A. Anyone may report an instance of alleged prohibited conduct to:
    1. The faculty member or official directly associated with the activity or event;
    2. A university administrator;
    3. The university statutory designee; or
    4. Learner Affairs.
  - B. Upon receipt of an allegation, a faculty member, official, administrator, or statutory designee will notify Learner Affairs.
  - C. Learner Affairs may be contacted at:
    1. Email: [LearnerAffairs@Capella.edu](mailto:LearnerAffairs@Capella.edu);
    2. U.S. Postal Service: 225 S. 6th Street, Minneapolis, MN 55402; or
    3. Phone: 1-888-227-3552, request that an advisor connect the call to Learner Affairs.
  - D. Upon receipt of an allegation, Learner Affairs will document reports of prohibited conduct under this policy and will maintain such documentation as dictated by the applicable document retention policy.
  - E. An allegation of prohibited conduct under this policy must include:
    1. The individual(s) against whom the alleged prohibited conduct is directed.
    2. A brief description of the alleged prohibited conduct, including the date(s), time(s), and place(s).
    3. The corrective action the learner is seeking.
  - F. In the event of a factual dispute at any stage of these procedures, and which follows the report of alleged prohibited conduct, the burden is on the alleged victim to establish that his or her version of the events in question is more likely true than not true.
  - G. If at any stage of these procedures the alleged victim requests that the complaint not be pursued, that request will be honored.
  - H. If at any stage of these procedures the alleged victim requests anonymity, good faith efforts will be undertaken to act consistently with that request. However, the learner is advised that the ability to maintain anonymity while pursuing a claim under this policy is limited.
  - I. The alleged victim maintains the right to notify law enforcement, including local police, at any time or to refrain from contacting such authorities. The alleged victim also maintains the right to seek an order of protection, no-contact order, restraining order, or similar lawful order from any court with jurisdiction. Upon the alleged

victim's request, Capella will assist the alleged victim(s) in notifying law enforcement authorities. Capella at all times retains the right to notify law enforcement, at its discretion, to protect its learners and/or employees.

## II. Initial Resolution Process

- A. The Initial Resolution Process shall be administered by Learner Affairs. Learner Affairs will consult with Human Resources when a faculty member or employee is involved.
- B. Upon receipt of an allegation, Learner Affairs will determine whether the allegation as stated constitutes an allegation of prohibited conduct under this policy. In the event Learner Affairs determines that the allegation does not contain alleged prohibited conduct under this policy, there will be no further proceedings under this policy.
- C. Learner Affairs may attempt to informally bring the matter to resolution, except in allegations involving alleged sexual assault, dating violence, domestic violence, or stalking. However, the alleged victim at all times retains the right to refuse informal resolution.
- D. If an informal resolution is not reached, the allegation will be sent to an independent review panel or Human Resources for investigation and review.

## III. Investigation and Review

- A. Allegations of prohibited conduct under this policy will be investigated by an independent review panel if the respondent is a learner and if, by Capella University's Human Resources department definition, the respondent is an employee or contractor. Allegations will receive a prompt, fair, and impartial investigation and resolution. This process will be conducted by school officials who receive annual training under this policy, which includes but is not limited to training on issues related to domestic violence, dating violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability.
- B. Investigations of alleged prohibited conduct will include:
  - 1. Notification to the respondent of the allegation of prohibited conduct.
  - 2. An opportunity for both the alleged victim and the respondent to submit any writing, information, evidence, and/or witnesses supporting or refuting the allegation.
  - 3. An opportunity for both the alleged victim and the respondent to be heard via teleconference.
- C. Both the alleged victim and the respondent will be entitled to have the same opportunities to have others present on the teleconference, including the opportunity to be accompanied on the call by an advisor of their choice.
- D. Following the investigation, the independent review panel and/or Human Resources will consider the alleged victim's and respondent's submissions, any teleconference statements, and any other evidence found during the course of the investigation.
- E. The independent review panel and/or Human Resources will determine whether prohibited conduct has occurred and will issue a decision, including sanctions, if any, no later than 60 days after receipt of the matter from Learner Affairs, unless the alleged victim requests extension, or circumstances beyond Capella University's control require extension.

- F. In the event prohibited conduct is found, the independent review panel and/or Human Resources will determine steps to take to remedy the effects of any harassment, discrimination, assault, or retaliation and to prevent recurrence.
- G. Such remedy may include, at the sole discretion of the independent review panel and/or Human Resources, an offer of counseling or other appropriate services to any person found to have been subjected to harassment, discrimination, assault, or retaliation.
- H. Learner Affairs facilitates communication between the independent review panel or Human Resources and the parties. Once a determination is reached, Learner Affairs will report the decision and any appeal opportunities to the alleged victim and the respondent in writing, simultaneously.
- I. The alleged victim and the respondent have the right to appeal the decision as described in section V.

#### IV. Summary Suspension

- A. Where the respondent is a learner and the alleged prohibited conduct is deemed to be egregious or to give rise to a perceived threat of danger or hostile environment for any Capella faculty, staff, employee, contractor, or learner, a respondent may be immediately suspended by use of this summary suspension process if it initially appears that the allegation of prohibited conduct is substantiated. The university administrator directly associated with the course, activity, or event in which the prohibited conduct occurs will have the discretion to determine, consistent with this section, when summary suspension is appropriate.
- B. If summary suspension is issued, the university administrator directly associated with the activity or event during which the alleged prohibited conduct occurred will promptly notify the respondent of his or her summary suspension and his or her right and opportunity to be heard by submitting a written response and/or appearing by telephone within seven calendar days from the date said notification is issued.
- C. The university administrator directly associated with the activity or event during which the prohibited conduct occurred will complete the procedures set forth in section III within 10 calendar days of the date of issuance of the notification of summary suspension.
- D. The respondent may submit a written request for extension of time for his or her written response or appearance by telephone beyond the seven calendar day deadline set forth in section IV.B. Such extensions shall be automatically granted up to a maximum of 30 calendar days. However, in the event the respondent should exercise this right to an extension, the deadline for the university official's decision under section III will be extended by the length of the learner's extension, with the summary suspension remaining in effect the entire time.
- E. Outcome
  - 1. In the event that the university administrator finds that the summary suspension was justified, the process continues as described in section III, with the suspension remaining in place unless and until reversed on appeal.
  - 2. In the event that the university administrator finds that the evidence reviewed does not justify the summary suspension, or in the event that no decision is issued by the university administrator within the time constraints described in sections IV.C and IV.D, the summary suspension will expire. The process will continue as described in

section III, but the respondent will return to the status previous to the summary suspension:

- a. In this instance, the respondent will have an opportunity to complete the missed course work within 10 calendar days of returning to the courseroom without penalty.
- b. If the respondent was in the last two weeks of the course, he or she has the option of receiving an Incomplete (“I”) grade; in that case, the course work must be completed and submitted no later than two weeks after the course ends; or
- c. The respondent may choose to withdraw from the course and retake the course without financial penalty or any penalty for reusing work previously submitted to fulfill assignments for that specific course.

#### V. Appeal Process

If either party chooses to appeal the initial decision, he or she must submit a formal, written appeal request to Learner Affairs. The appeal request must be submitted via mail or email and within 10 calendar days of being sent notification of the panel’s decision.

- A. The president or president’s designee will receive and review the record developed at the investigation and review stage. In addition, at his or her sole discretion, the president or president’s designee may accept or reject any evidence not presented at the investigation and review stage of the appeal process.
- B. Following the review, the president or president’s designee will issue a decision and report it to the alleged victim and the respondent as soon as practicable. Decisions shall be issued no later than 60 calendar days after receipt of appeal, unless the alleged victim requests extension or circumstances beyond the university’s control require extension. The president or president’s designee may affirm or reverse the panel’s decision, in whole or in part, or may issue a new decision.
- C. The decision of the president or president’s designee is final and will be communicated in writing to the alleged victim and respondent simultaneously.
- D. A record of the final decision and all related materials will become part of the respondent’s official academic record and, upon request, will be made available to all Capella University boards and any appropriate regulatory bodies.

#### VI. Additional Procedures for Reporting a Consensual Relationship

- A. Any reported cases of a consensual relationship involving an employee will be reported to Human Resources.
- B. If Capella determines a prohibited consensual relationship exists, the employee’s position of authority with respect to the specific learner at issue will be adjusted to eliminate the existence of the prohibited consensual relationship. Resolution of any discrimination, harassment, or assault resulting from the consensual relationship will be handled according to the procedures in sections II–V.

VII. All procedures in this policy apply to learners in credit-based (GuidedPath) and FlexPath programs.

**POLICY OWNERS**

Academic Owner: President

Operations Owner: Learner Affairs

**RELATED DOCUMENTS**

University policy 4.02.02 Learner Code of Conduct

University policy 4.02.03 Learner Grievance

**REVISION HISTORY**

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