

University Policy 4.02.04**Discrimination, Harassment, and Assault****Policy Revision Approval Date: August 13, 2020****Policy Revision Effective Date: August 14, 2020****Procedure Approval Date: August 13, 2020****Procedure Effective Date: August 14, 2020****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. This policy does not apply to allegations of sexual harassment or any retaliatory behavior related to reports of such conduct; such allegations are subject to Capella University Policy 4.02.09

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.

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.

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.

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, discrimination, harassment, 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. Prohibited conduct does not include sexual harassment, which is covered by separate University Policy.

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 will be determined according to Capella's Human Resources policies, located on Stella and in the *Employee Handbook*.

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 will 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. The Office of Academic and Community Standards.
 - B. Upon receipt of an allegation, a faculty member, official, administrator, or statutory designee will notify the Office of Academic and Community Standards.
 - C. The Office of Academic and Community Standards may be contacted at:
 1. Email: OACS@capella.edu;
 2. U.S. Postal Service: 225 S. 6th Street, Minneapolis, MN 55402; or
 3. Phone: 1.888.CAPELLA (227.3552), request that an advisor connect the call to The Office of Academic and Community Standards.
 - D. Upon receipt of an allegation, the Office of Academic and Community Standards 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 after receipt of the complaint, the evidence must establish that the version of the events adopted by the university’s determination is more likely accurate than not.
 - 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 will be administered by the Office of Academic and Community Standards. The Office of Academic and Community Standards will consult with Human Resources when a faculty member or employee is involved.
- B. Upon receipt of an allegation, the Office of Academic and Community Standards will determine whether the allegation as stated constitutes an allegation of prohibited conduct under this policy. In the event the Office of Academic and Community Standards determines that the allegation does not contain alleged prohibited conduct under this policy, there will be no further proceedings under this policy.
- C. The Office of Academic and Community Standards may attempt to informally bring the matter to resolution. 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. 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.
- B. Allegations of prohibited conduct under this policy will be investigated by Capella University's Human Resources department if the respondent is a Capella University employee or contractor. Allegations will receive a prompt, fair, and impartial investigation and resolution.
- C. 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.
- D. 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.
- E. 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.

- F. 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 the Office of Academic and Community Standards, unless the alleged victim requests extension, or circumstances beyond Capella University's control require extension.
- G. 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.
- H. 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.
- I. The Office of Academic and Community Standards facilitates communication between the independent review panel and/or Human Resources and the parties. Once a determination is reached, the Office of Academic and Community Standards will report the decision and any appeal opportunities to the alleged victim and the respondent in writing, simultaneously.
- J. 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 their summary suspension and their 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 their written response or appearance by telephone beyond the seven calendar day deadline set forth in section IV.B. Such extensions will 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 coursework within 10 calendar days of returning to the courseroom without penalty.
 - b. If the respondent was in the last two weeks of the course, they have the option of receiving an Incomplete (“I”) grade; in that case, the coursework 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, they must submit a formal, written appeal request to the Office of Academic and Community Standards. 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 their 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 will 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.
- E. Capella University employees and contractors are ineligible to appeal final decisions rendered by the university’s Human Resources staff pursuant to this policy.

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 university 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 University Policy 4.02.09.

VII. All procedures in this policy apply to learners in GuidedPath and FlexPath programs.

POLICY OWNERS

Academic Owner: President

Operations Owner: Office of Academic and Community Standards

RELATED DOCUMENTS

University policy 4.02.02 Learner Code of Conduct

University policy 4.02.03 Learner Grievance

University policy 4.02.09 Sexual Harassment

REVISION HISTORY

Original Policy Approval Date: July 27, 2002

Revision Dates: 7-1-05; 9-1-07; 2-3-12; 3-23-12 7-28-14; 11-7-14; 3-18-15; 12-11-15; 8-11-16; 6-30-17, 8-13-20

Administrative edits as result of ongoing review: 12-8-09; 2-22-10; 4-24-13; 10-23-13; 11-1-16; 12-14-16; 1-10-18; 4-1-18; 4-1-20; 3-26-21; 9-10-21