University Policy 4.02.09	Sexual Harassment
Policy Approval Date: August 13, 2020 **Policy Effective Date: August 14, 2020** **Revised Procedure Approval Date: March 10, 2025** **Revised Procedure Effective Date: April 1, 2025**	

POLICY STATEMENT

Capella University is committed to maintaining education programs and activities that are free of sex-based discrimination, as defined in Title IX of the Education Amendments of 1972 (Title IX). Capella University prohibits sexual harassment of any members of the university community and any retaliatory behavior related to reports of such conduct. To ensure the safety of students and personnel, a healthy and thriving workplace and learning environment, and compliance with Title IX in Capella University's education programs and activities, Capella University has adopted this policy.

RATIONALE

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

DEFINITIONS

Community

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

Complainant

A complainant is an individual who is participating in or attempting to participate in a Capella University education program or activity and is alleged to be the victim of conduct that could constitute a violation of this policy if proved.

Consensual Relationship

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

Education Program or Activity

Education program or activity includes locations, events, or circumstances over which Capella exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

Formal Complaint
A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate the allegation of sexual harassment.

Hostile Environment
A hostile environment is an objectively hostile or abusive Capella University setting caused by sexual harassment that is so severe, persistent, and pervasive that it effectively denies a person equal access to an education program or activity.

Prohibited Conduct
Prohibited conduct includes sexual harassment and retaliation, as defined in this policy, provided that the conduct either a) occurs in the context of a Capella University education program or activity; or b) creates a hostile environment in a Capella University education program or activity.

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.

Sanction
A sanction is a disciplinary action that may result from prohibited conduct. Disciplinary action may include one or more of the following: a) formal written warning; b) mandated remedial activity; c) suspension from Capella University; d) dismissal from a program; e) dismissal from Capella University; or f) cancellation of a previously-awarded academic credit or degree. 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.

Sexual Harassment
Sexual harassment is conduct that occurs within an education program or activity, on the basis of sex, and satisfies one or more of the following:

1. A Capella University employee, or contracted worker, conditioning the provision of a Capella University aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct that results in what a reasonable person would deem to be a hostile environment; or
3. "Sexual assault" as defined in the Clery Act at 20 U.S.C. 1092(f)(6)(A)(v); and "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). (34 C.F.R. 106.30(a) (2020); commonly known as the Violence Against Women Act or "VAWA").

Summary Suspension
Summary suspension is the immediate suspension of a student. Summary suspension is a temporary status during which a student is denied access to the courseroom and prohibited from engaging in identified university activities while an evaluation of alleged prohibited conduct is being completed.

Supportive Measures
Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available, without fee or charge. Supportive measures may include counseling, extensions of deadlines, course-related adjustments, modifications of class schedules, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas, and other similar measures. Capella University will maintain as confidential any supportive measures provided to a complainant or respondent, to the extent that maintaining such confidentiality does not impair the ability of Capella University to provide the supportive measures.

Suspension
Suspension is a university-initiated temporary status during which a student 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 leadership position equivalent to or above an academic director.

PROCEDURES

I. Reporting Suspected Prohibited Conduct

A. Capella University strongly encourages the prompt reporting of sexual misconduct to allow the University to respond promptly and effectively. If the reported respondent is not a member of the Capella community or is no longer associated with the University at the time of the report or at the time a resolution process is initiated, Capella may be unable to conduct an investigation or take disciplinary action.

B. 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 Title IX Coordinator; or
   4. The Office of Academic and Community Standards.

C. Upon receipt of an allegation, a faculty member, official, or administrator will notify the Title IX Coordinator and/or the Office of Academic and Community Standards.

D. 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;

3. Phone: 1.888.CAPELLA (.227.3552), request that an advisor connect the call to the Office of Academic and Community Standards; or
4. By submitting a report online (including anonymous reports) through http://titleix.cusu.ethicspoint.com/

E. 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.

F. Upon receipt of an allegation, the Office of Academic and Community Standards will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain the Title IX complaint resolution process, including which members of the University may have access to – and for what purpose – information obtained during this process.

G. 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) if known.
   3. The corrective action the student or member of the Capella Community is seeking.

H. 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 their version of the events in question is more likely true than not true.

I. If at any state of these procedures the Complainant requests in writing (may be written or electronic writing) that the complaint not be pursued, that request will be honored unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

J. If at any stage of these procedures the Complainant requests anonymity, good faith efforts will be undertaken to act consistently with that request. However, the student is advised that the ability to maintain anonymity while pursuing a claim under this policy may be limited by law or regulation in certain circumstances.

K. The Complainant maintains the right to notify law enforcement at any time or to refrain from contacting such authorities. The Complainant 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 Complainant's request, Capella will assist the alleged victim(s) in notifying law enforcement. Capella at all times retains the right to notify law enforcement, at its discretion, to protect its students and/or employees or when required by law or regulation.

L. In the event an allegation of sexual harassment arises out of a Consensual Relationship as defined by University Policy 4.02.04, then the Additional Procedures for Reporting a Consensual Relationship set forth at University Policy 4.02.04 (IV) shall also be applied.

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. A complaint will be dismissed in the event that, at any time during the investigation or hearing any of the following occur: a) the alleged conduct does not meet the definition of sexual harassment under this policy even if proved; b) the conduct did not occur in an educational program or activity; or c) specific circumstances prevent the institution from gathering evidence sufficient to reach a determination.

C. Only after a formal complaint has been filed, the Office of Academic and Community Standards may offer both parties the opportunity to attempt an informal resolution of the matter. In order for any kind of informal resolution process to occur that forecloses the procedures contained in this policy, the following must occur:

1. Both parties must give voluntary, informed, written consent to attempt informal resolution.
2. Both parties must be informed of any consequences of participating in an informal resolution process.
3. Parties must be notified that they can withdraw from any informal resolution process at any time and resume the formal grievance process.
4. Informal resolution is not available where allegations involve employee sexual harassment of a student.
5. If informal resolution is not reached, the allegation will be sent back to the formal grievance process as defined in this policy (or to Human Resources as appropriate) for investigation and review.

D. At any time during any portion of the procedures contained in this policy, either party may request a temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. Capella University reserves the right, in its sole discretion, to deny such requests if they are made merely to delay or impede the prompt resolution of such matters.

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 student. Allegations will receive a prompt, fair, and impartial investigation and resolution. The 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 harassment, and stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

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. Throughout the investigation and review process, there will be a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
D. Investigations of alleged prohibited conduct will include:
    1. Notification to the respondent of the allegation of prohibited conduct, that respondent is presumed not responsible, and that a determination regarding responsibility will be made at the conclusion of the process.
    2. An opportunity for both parties to submit any writing, information, evidence, and/or witnesses supporting or refuting the allegation. As a part of this opportunity, both parties have the ability to review any such information provided by another party to any interviews, meetings, or hearings, as long as the information is directly related to the allegations. Note that prior to a live hearing, both parties must have at least 10 calendar days to make corrections, provide context, and prepare responses to such information or evidence.
    3. Written notice of all hearings, investigative interviews, or other meeting where participation is invited or expected will include the date, time, location and participants. This will be provided in sufficient time for the party to prepare to participate.
    4. Prior to completion of the investigative report, Capella University will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have at least 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. The institution will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
    5. Capella University will create an investigative report that fairly summarizes relevant evidence. The investigative report will be sent to each party and the party's advisor, if any, for their review and written response at least 10 calendar days prior to a hearing (if a hearing is required) or other time of determination regarding responsibility.
E. Capella University will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the institution obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 C.F.R. 99.3, then the institution must obtain the voluntary, written consent of a "parent," as defined in 34 C.F.R. 99.3).
F. Role and Appointment of Advisors

1. During the course of any grievance proceeding, parties' advisors may be, but are not required to be, attorneys. Capella University will not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. During the investigative phase, advisors will only be allowed to interact with Capella University personnel and will not have direct contact with adverse parties or witnesses. During a live hearing, advisors will conduct cross-examination.
2. If a party does not have an advisor present at the live hearing, Capella University will provide, without fee or charge to that party, an advisor of the institution's choice solely for the purpose of conducting cross-examination on behalf of that party. The institutionally-provided advisor may be, but is not required to be, an attorney. Only advisors may cross-examine another party or adverse witness. To be clear, under no circumstances will one party be allowed to directly cross-examine another party or an adverse witness.
3. A party must notify Capella University at least seven (7) days prior to any hearing or proceeding at which an advisor may participate with the contact information for that advisor. If a party does not have their own advisor but will need to have one provided by Capella University, that party must also notify Capella University at least seven (7) days prior to any hearing or proceeding at which an advisor may participate so that the University can arrange for advisor to be present and to have time to prepare for such hearing or proceeding.

G. Live Hearings, Examination, Cross-Examination, Relevance, Sexual History

1. Both parties will have an opportunity to participate in a live hearing. At the University's discretion, the hearing may be conducted virtually with technology enabling participants to simultaneously see and hear each other or with all parties physically present in the same geographic location. The University may also conduct the live hearing with some participants in the same geographic location, and others virtually, so long as both parties are provided the same opportunity (if any) to be present in the same geographic location.
2. During the live hearing, the decision-maker(s) will make an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and ensure that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
3. The decision-makers will not draw an inference solely based upon a party's or witness's failure or refusal to appear at live hearing or submit to cross-examination.
4. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
5. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-

examination or other question, the decision-maker(s) may issue a determination as to relevance and explain any decision to exclude a question as not relevant.

6. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions or evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
7. Capella University will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review, without charge or fee, within a reasonably prompt timeframe.
8. During the course of the hearing, the decision-maker(s) may consult with Capella University's legal counsel by telephone or in person.

H. Determination of Responsibility
1. The decision-maker(s), who will not be the same person(s) as the Title IX Coordinator or the investigator(s), will issue a written determination regarding responsibility.
2. The decision-maker(s)' written determination will include:
   a. The identification of the allegations potentially constituting Title IX Sexual Harassment as noticed.
   b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
   c. Findings of fact supporting the determination.
   d. Conclusions regarding the application of the institution's code of conduct to the facts.
   e. A statement of, and rationale for, the result as to each material allegation, including a determination regarding responsibility, any disciplinary sanctions the institution imposes on the respondent, and whether remedies will be provided by the institution to the complainant.
   f. The institution's procedures and permissible bases for the complainant and respondent to appeal the determination of responsibility.
   g. The institution will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. This constitutes the conclusion of the Title IX complaint resolution process.

IV. Appeal Process

A. Both parties will have the opportunity to appeal, via written request to the Office of Academic and Community Standards within ten (10) calendar days of being sent notice of the outcome, on the following bases:
1. Procedural irregularity that affected the outcome of the matter.

2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

B. If either party chooses to appeal the initial decision on any of the above bases, 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.
   1. The president or president's designee will receive and review the record developed at the investigation and review stage.
   2. Following the review, the president or president's designee will issue a decision and report. The president or president's designee may affirm or reverse the decision, in whole or in part, or may issue a new decision.
   3. The decision of the president or president's designee is final and will be communicated in writing to the alleged victim and respondent simultaneously.
   4. 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.

V. Summary Suspension Procedures

A. Where the respondent is a student 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 student, 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 student'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.

VI. Alcohol and Drug Use Amnesty

The health and safety of every student at Capella is of utmost importance. Capella recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time sexual misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Capella strongly encourages students to report incidents of sexual misconduct. A witness to or individual who experiences sexual misconduct, acting in good faith, who discloses any incident of sexual misconduct to University officials or law enforcement will not be sanctioned under Capella's code of conduct for violations of alcohol and/or drug use policies occurring at or near the time of the incident(s) of sexual harassment or sexual violence. Capella may request the individual attend an approved alcohol or drug education program and without assessing any charges for such program. This amnesty provision also applies to student groups making a report of sexual misconduct. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

VII. Additional Procedures for reporting a consensual Relationship

In the event an allegation of sexual harassment arises out of a Consensual Relationship as defined by University Policy 4.02.04, then the Additional Procedures for Reporting a Consensual Relationship set forth at University Policy 4.02.04 (IV) shall also be applied.

VIII. All procedures in this policy apply to students in programs in GuidedPath and FlexPath formats.

POLICY OWNERS
Academic Owner: President
Operations Owner: Office of Academic and Community Standards

RELATED DOCUMENTS
University policy 4.02.02 Student Code of Conduct
University policy 4.02.03 Student Grievance
University policy 4.02.04 Discrimination, Harassment, and Assault

REVISION HISTORY
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