Title IX Sexual Harassment and Non-Discrimination Policy

Section 1: Introduction

1.1 Policy Statement: Cooley Law School (Cooley) is committed to creating and maintaining a learning and working environment that is free from unlawful discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities; Title VII of the Civil Rights act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act, Clery Act, and the Violence Against Women Act (VAWA). Sexual Harassment and Retaliation under this Policy will not be tolerated by Cooley and is grounds for disciplinary action, up to and including, permanent dismissal from Cooley and/or termination of employment.

1.2 Purpose: Cooley takes all reported sexual misconduct and harassment seriously. Cooley will promptly discipline any individuals within its control who are found responsible for violating this Policy. Additionally, reported sexual misconduct and harassment that does not meet the definitions and jurisdiction of this Policy will be referred for review to the Dean of Students for potential referral to the Title IX coordinator if allegedly committed by a student, or the Director of Human Resources if allegedly committed by an employee under the respective Student Policy Manual and Employee Manual in compliance with VAWA and Clery Act.

1.3 Applicability: This Policy applies to students and employees as follows:

- **a. To Students**: Where the Respondent is a student at Cooley at the time of the alleged conduct, the alleged conduct includes Sexual Harassment under this Policy, the alleged conduct occurs in Cooley's Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in Cooley's Education Program or Activity.
- **b. To Employees:** Where the Respondent is an employee at Cooley at the time of the alleged conduct, where the alleged conduct includes Sexual Harassment under this Policy, the alleged conduct occurs in Cooley's Education Program and Activity or employment, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in Cooley's Education Program or Activity, or employment.

1.4 Title IX Coordinator and Key Title IX Officials: The Title IX Coordinator is the Cooley administrator who oversees Cooley's compliance with Title IX. The Title IX Coordinator is responsible for administrative response to reports and Formal Complaints of Sexual Harassment. The Title IX Coordinator is available to discuss the grievance process, coordinate supportive measures, explain Cooley policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities.

Any member of the Cooley community may contact the Title IX Coordinator with questions. Title IX Coordinators' contact information is as follows:

Jacqueline Freeman, Senior Director and Special Advisor to the President for Engagement, Civil Rights, and Title IX
300 S. Capitol Avenue
Lansing, MI 48933
freemanj@cooley.edu
(517) 371-5140

Ronda Beck, SR VP of Operations and Finance
300 S. Capitol Avenue
Lansing, MI 48933
beckr@cooley.edu
(517) 371-5140 X2200

In addition to the Title IX Coordinators, Cooley appoints investigators, decision makers and informal resolution facilitators who have roles in the formal grievance process more fully explained in Sections 6, 7, and 8 of this Policy.

The Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators will receive annual training in compliance with Title IX. All administrators in these roles will not rely on sex stereotypes and will provide impartial investigations and adjudications of Formal Complaints of Sexual Harassment. All materials used to train these administrators will be publicly made available on Cooley's website in accordance with Title IX requirements.

The Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

1.5 **Notification:** Cooley will use law school electronic mail (email) for purposes of communication and notification under this Policy.

1.6 **Free Speech:** Freedom of speech and principles of academic freedom are central to the mission of institutions of higher education. Constitutionally protected expression cannot be considered Sexual Harassment under this Policy.

1.7 **Dissemination of Policy:** This Policy will be made available to all Cooley administrators, faculty, staff, and students online at cooley.edu/node/988 and in Cooley's student policy manual, catalog(s) and the employee handbook of operating procedures.

1.8 **Effective Date:** The effective date of this Policy is August 14, 2020.

1.9 **Retaliation and False Statements Prohibited:** Neither Cooley nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy or because the

individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

- **a.** Alleged violations of Retaliation will be referred to the Dean of Students or Director of Human Resources to be investigated and resolved under the respective policies.
- **b.** The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy.
- **c.** Charging an individual with a policy violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute Retaliation, which is prohibited under Title IX. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

1.10 Amnesty: Reporting Sexual Harassment is encouraged at Cooley. Thus, it is imperative that Complainants and witnesses share information without fear of potential consequences for minor Policy violations including, but not limited to, consumption of alcohol or the use of illicit drugs. Cooley offers parties and witnesses amnesty from such minor violations but may include educational opportunities for individuals in lieu of a finding of responsibility or punitive sanctions.

1.11 Other Law School Policies: This Policy takes precedence over other law school policies and procedures concerning Sexual Harassment under Title IX in the event of a conflict.

1.12 Alleged violations of the student or employee policies that rise from the same events as alleged Sexual Misconduct under this Policy will be investigated and resolved under the grievance process in this Policy unless the Sexual Harassment has been dismissed under Section 5.2 of this Policy.

Section 2: Definitions

2.1 Definitions of Prohibited Conduct Under this Policy[1]

2.1.1 Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the School conditioning the provision of an aid, benefit, or service of the School on an individual's participation in unwelcome sexual conduct (Quid Pro Quo);

(2) Unwelcome conduct determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the School education program or activity[2]; or

[1] See Addendum A for applicable state law definitions.

[2] A severe, pervasive, and objectively offensive assessment includes, but is not limited to, a consideration of the frequency of the offensive conduct, the nature of the unwelcome sexual acts or words, such as whether the harassment was physical, verbal or both; whether the harassment was merely an offensive utterance; and the number of victims involved and the relationship between the parties including, but not limited to, the ages of the harasser and the victim. In evaluating whether conduct is severe, pervasive, and objectively offensive, Cooley will look at the totality of the circumstances, expectations and relationships.

(3) Sexual Assault, Dating Violence, Domestic Violence or Stalking as defined in this Policy.

2.1.2 **Sexual Assault** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including Rape, Fondling, Incest, and Statutory Rape as defined in this Policy.

2.1.3 **Rape** means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim.

2.1.4 **Sexual contact** means the intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.

2.1.5 **Incest** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Florida and Michigan law.

2.1.6 **Statutory Rape** means sexual intercourse with a person who is under the statutory age of Consent.

2.1.7 **Dating Violence** means violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship,
- The type of relationship,
- The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

2.1.8 **Domestic Violence** includes felony or misdemeanor crimes of violence committed by:

- a current or former spouse or intimate partner of the victim,
- a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,

- a person similarly situated to a spouse of the victim under the domestic or family violence laws of Michigan or Florida or
- any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Michigan or Florida.

2.1.9 **Stalking** means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to—

- fear for their safety or the safety of others; or
- suffer Substantial Emotional Distress.

2.2 Definitions Related to Sexual Harassment: Consent, Course of Conduct, Incapacitation, Reasonable Person, Substantial Emotional Distress

2.2.1 **Consent** is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires of each person an affirmative, conscious, and voluntary agreement to engage in sexual activity.

It is the responsibility of each person to ensure they have the affirmative Consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of Consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the decision-maker will consider all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief is not a valid defense where:

(1) The Respondent's belief arose from the Respondent's own intoxication or recklessness;
(2) The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively Consented; or
(3) The Respondent knew or a reasonable person should have known that the Complainant was unable to Consent because the Complainant was incapacitated, in that the Complainant was:

- asleep or unconscious
- unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication
- unable to communicate due to a mental or physical condition.

2.2.2 **Course of Conduct** means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

2.2.3 **Incapacitation** means that a person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical or developmental abilities render them incapable of making rational informed decisions. Incapacitated is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

A person violates this Policy when they engage in sexual activity with another person who is Incapacitated and a Reasonable Person in the same situation would have known that the person is Incapacitated. Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.

2.2.4 **Reasonable Person** means a reasonable person under similar circumstances and with similar identities to the victim.

2.2.5 **Substantial Emotional Distress** means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

2.3 Other Defined Terms

2.3.1 **Actual Knowledge** means Notice of Sexual Harassment allegations to the Title IX Coordinator or any Official with Authority, except that actual knowledge is not met when the only individual with actual knowledge is the Respondent.

2.3.2 **Business Day** means any weekday not designated by Cooley as a holiday or administrative closure day. When calculating a time period of Business Days specified in this Policy, the Business Day of the event that triggers a time period is excluded.

2.3.3 **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as "parties" throughout this Policy.

2.3.4 **Confidential Employee** means an individual who will not report any information about an incident to the Title IX Coordinator without the Complainant's permission.

2.3.5 **Disciplinary Sanctions** are imposed only after a finding of responsibility through the grievance process or an agreement through the informal resolution process.

2.3.6 **Education Program or Activity** includes locations, events, or circumstances over which Cooley exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs. This includes conduct that occurs on Cooley property, during any Cooley activity, or in any building owned or controlled by a student organization that is officially recognized by Cooley.

2.3.7 **Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that Cooley investigate the allegation of Sexual Harassment.

2.3.8 **Official with Authority** means an individual who has the authority to institute corrective measures and is required to report Sexual Harassment to the Title IX Coordinator to initiate Cooley's response to the Sexual Harassment allegations. Officials with Authority are limited to the following positions at Cooley: Title IX Coordinators.

2.3.9 **Remedies** are designed to restore or preserve equal access to Cooley's Education Program or Activity. Remedies may include but are not limited to the same individualized services as Supportive Measures; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

2.3.10 **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as "parties" throughout this Policy.

2.3.11 **Responsible Employee** means any individual who is employed by Cooley and not deemed to be a Confidential Employee. Responsible Employees are required by Cooley to report Sexual Harassment to the Title IX Coordinator promptly upon receiving a report of a Sexual Harassment.

2.3.12 **Retaliation** means intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy.

2.3.13 Supportive Measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

Such measures are designed to restore or preserve equal access to Cooley's Education Programs or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Cooley's educational environment, or deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Section 3: Reporting Sexual Harassment and Preservation of Evidence

3.1 Reporting to Cooley

3.1.1 Reporting to Title IX Coordinators: Reports of Sexual Harassment may be made to the Title IX Coordinator in any of the following ways, by anyone, at any time: email, phone, or mail. Reports may be made to the Title IX Coordinators in person at 300 S. Capitol Avenue, Lansing, MI 48933 during normal business hours. After Title IX Sexual Harassment has been reported to the Title IX Coordinator, the Title IX Coordinator will promptly offer supportive measures to the Complainant, regardless of whether the Complainant was the reporter of the Sexual Harassment.

3.1.2 Reporting to Officials with Authority: The following positions are Officials with Authority: Title IX Coordinators.

3.1.3 Reporting to Confidential Employees: The Controller is a Confidential Employee. Reports made to Confidential Employees are considered confidential reports and will not be reported to the Title IX Coordinator without the Complainant's permission and will not constitute actual notice to Cooley.

The address for confidential reporting is:
300 S. Capitol Avenue, Lansing, MI 48933
beckr@cooley.edu, (517) 371-5140 X2200

3.1.4 Reporting to Responsible Employees: Employees who are not defined as Confidential Employees are required to report Sexual Harassment to the Title IX Coordinator who will respond to the Sexual Harassment.

3.1.5 Anonymous Reporting: Anonymous reports may be made by telephone, in writing or via email to conduct@cooley.edu to the Title IX Coordinator. A decision to

remain anonymous, however, may greatly limit Cooley's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating this Policy.

3.2 Reporting to Law Enforcement: Reports may be filed with local law enforcement agencies. The Title IX Coordinator can assist with contacting law enforcement agencies. Law enforcement investigations are separate and distinct from Cooley investigations. Contact information for each location is as follows:

Lansing	
Police (non-emergency)	(517) 483-4600
Emergency	911
Tampa Bay	
Police (non-emergency)	(813) 247-8200
Emergency	911

3.3 Reporting to Outside Agencies: Students and employees may report to external agencies:

- **Students**

Florida Students:

Atlanta Office
Office for Civil Rights
U.S. Department of Education
61 Forsyth St. S.W. Suite 19T10
Atlanta, GA 30303-8927
(404) 974-9471

Michigan Students:

Cleveland Office
Office for Civil Rights
U.S. Department of Education
1350 Euclid Avenue, Suite 325
Cleveland, OH 44115-1812
(216) 522-4970

Office for Civil Rights
U.S. Department of Health and Human Services

Online complaint portal: https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf
1-800-368-1019

- **Employees**

U.S. Equal Employment Opportunity Commission
EEOC Public Portal: https://publicportal.eeoc.gov/Portal/Login.aspx
1-800-669-4000

3.4 Outside Agency Support and Resources:

Lansing
Michigan Lawyers and Judges Assistance Program (800) 996-5522

Tampa Bay
Florida Lawyers Assistance Program (800) 282-8981

Additional Resources are available from your Dean of Students and on the Wellness tab on Cooley Connect.

3.5 Local Emergency Facilities

Closest Hospitals:

Lansing
UM Health-Sparrow
1215 E Michigan Ave.
Lansing, MI 48912
(517) 364-1000

Tampa Bay
Advent Health
3100 E. Fletcher Ave.
Tampa, FL 33613
(813) 971-6000

3.6 Time Limits on Reporting. There are no time limits on reporting Sexual Harassment to the Title IX Coordinator or Cooley. If the Respondent is no longer subject to Cooley's Education Program or Activity or significant time has passed, Cooley will have limited ability to investigate, respond and/or provide disciplinary remedies and sanctions.

3.7 Cooley Federal Reporting Obligations:
Certain Cooley employees, called Campus Security Authorities, have a duty to report certain incidents of misconduct to comply with the Clery Act. Campus Security Authorities are not required to report personally identifiable information for Clery Act purposes, but statistical information must be sent regarding the type of incident that occurred and its general location (e.g., on or off-campus) for publication in an annual report of crime statistics, called the Annual Security Report. Statistics published in the Annual Security Report help to provide the campus community with a clearer picture of the extent and nature of campus crime, but the statistics do not personally identify Complainants or Respondents. Reports by Campus Security Authorities are not official police reports and do not initiate criminal investigations.

When Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking are reported under the Clery Act, Cooley must issue timely warnings for such incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Cooley will not disclose a Complainant's name and other identifying information in a timely warning but will provide sufficient information for Cooley community members to make informed safety decisions in response to potential danger.

3.8 Preservation of Evidence: Cooley recognizes that a Complainant may need time to decide whether to report an incident of Sexual Harassment to the police and/or Cooley. The purpose of this section is to provide Complainants with suggestions on preserving evidence while they decide whether to report an incident.

Cooley encourages Complainants, as soon as possible after experiencing Sexual Assault to take steps to preserve evidence such as: Have a forensic sexual assault nurse examination performed as soon as possible after the incident, but no later than 72-96 hours after the incident.

- When possible, prior to having a forensic sexual assault nurse examination performed, avoid: changing clothing, bathing, showering, using a douche, using the bathroom, brushing one's teeth, drinking liquids, washing one's hands or face, or combing one's hair;
- Preserve any clothing, sheets, or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags);
- Preserve or capture electronic communications such as text messages, emails, social media posts or exchanges (e.g., Snapchat, Facebook, Twitter);
- Preserve or capture video, audio (e.g., voice mail messages), or photographs, including those stored on smartphones or other devices; and Preserve any other physical, documentary, and/or electronic data that might be helpful to an investigator.

Section 4: Initial Response to Reported Sexual Harassment: Upon receipt of a report of Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant, regardless of whether the Complainant was the individual who initiated the report. During the initial contact with the Complainant, the Title IX Coordinator will:

- Provide the Complainant with notice of their rights and options
- Explain the process for filing a Formal Complaint;
- Explain the Grievance Process;
- Discuss the availability of Supportive Measures regardless of whether a Formal Complaint is filed;
- Consider the Complainant's wishes with respect to Supportive Measures.

Section 5: Formal Complaint: Cooley will investigate all allegations of Sexual Harassment in a Formal Complaint.

5.1 Filing a Formal Complaint: A Formal Complaint must:

(1) Contain an allegation of Sexual Harassment against a Respondent;
(2) Request that Cooley investigate the allegation; and
(3) Be signed by the Complainant or Title IX Coordinator.

In limited circumstances, if a Complainant does not sign a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint. In determining whether to sign a Formal Complaint, the Title IX Coordinator will consider factors that include but are not limited to:

- Whether there have been other reports of Sexual Harassment or other relevant misconduct concerning the same Respondent whether or not the incidents occurred while the Respondent was a Cooley student or employee;
- Whether the Respondent threatened further Sexual Harassment or other misconduct against the Complainant or others;
- Whether the alleged Sexual Harassment was committed by multiple perpetrators;
- The nature and scope of the alleged Sexual Harassment including whether the Sexual Harassment was perpetrated with a weapon;
- The ages and roles of the Complainant and the Respondent;
- Whether Cooley can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged Sexual Harassment such as security cameras or physical evidence);
- Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group.

5.2 Dismissal of a Formal Complaint.

5.2.1 Required Dismissal: The Title IX Coordinator will dismiss a Formal Complaint for purposes of Sexual Harassment if:

(1) The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in this Policy even if proved;
(2) The conduct alleged did not occur in Cooley's Education Program or Activity; or
(3) The Conduct alleged in the Formal Complaint did not occur against a person in the United States.

Dismissal of a Formal Complaint does not preclude action under other provisions of the Cooley's policies and procedures. If a Formal Complaint is dismissed under this section and the Respondent is a student, the matter will be sent to the Dean of Students for review. The Dean of Students will decide whether the matter will be pursued under the Cooley polices.

If a Formal Complaint is dismissed under this section and the Respondent is an employee, the matter will be sent to the Senior Vice President for Operations and Finance for review. The Senior Vice President for Operations and Finance will decide whether the matter will be pursued under the Cooley policies.

5.2.2 Permissive Dismissal: The Title IX Coordinator may dismiss a Formal Complaint or any allegations within the Formal Complaint, if at any time during the investigation or hearing:

(1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint,
(2) The Respondent is no longer enrolled or employed by Cooley, or
(3) Specific circumstances prevent Cooley from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations within the Formal Complaint.

5.2.3 Appeal of Dismissal: Either party may appeal the dismissal of a Formal Complaint or any allegations therein. See Section 7 for bases and process for appeals.

5.3 Consolidation of Formal Complaints: The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent or by more than one Complainant against one or more Respondents where the allegations arise out of the same facts or circumstances.

Section 6: Grievance Process The grievance process within this Policy is designed to treat Complainants and Respondents equitably. Remedies are provided to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent and Disciplinary Sanctions are not imposed against a Respondent prior to the completion of the grievance process.

6.1: General Grievance Process Information:

6.1.1 Burden of Proof and Burden of Gathering Evidence: All investigations and proceedings, including hearings, relating to Sexual Harassment will be conducted using a "preponderance of the evidence" (more likely than not) standard. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Cooley, not the parties.

6.1.2 Presumption of Not Responsible: The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.

6.1.3 Time Frames for Grievance Process: Cooley strives to complete the grievance process within one hundred and twenty (120) Business Days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include but are not limited to 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.

6.1.4 Medical Records: Cooley will not access, consider, disclose, or otherwise use 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 Cooley obtains that party's voluntary, written permission to do so for the grievance process within the Policy.

6.1.5 Privileged Information: Cooley will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.

6.1.6 Range of Disciplinary Sanctions and Remedies: See the Student Policy Manual and the Employee Manual for disciplinary sanctions and remedies.

6.1.7 Notice of Meetings, Interviews, and Hearings: Parties and witnesses will be provided notice of any meeting, interview, and/or hearing with sufficient time (approximately three (3) days) to prepare to participate. This notice will include the date, time, location, participants and purposes of the meeting, interview and/or hearing.

6.2 Notice of Allegations: Upon receipt of a Formal Complaint, the investigator will provide Notice of Allegations to the parties who are known. The Notice of Allegations will include:

(1) Notice of the party's rights and options
(2) Notice of Cooley s grievance process
(3) Notice of Cooley's informal resolution process and options
(4) Notice of the allegations of Sexual Harassment including:
- The identities of the parties involved in the incident, if known,
- The conduct allegedly constituting Sexual Harassment, and
- The date and location of the incident, if known.

(5) Notice that the Respondent is presumed not responsible of the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
(6) Notice that the parties may have an advisor of their choice, who may be, but is not required to be an attorney, and that the advisor may inspect and review evidence as explained in section 6.3.2 of this Policy.
(7) Notice of the Cooley Honor Code provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Notice of Allegations will be updated and written notice provided to the parties if at any time during the investigation Cooley decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Allegations.

6.3 Investigation of Formal Complaint. Cooley will conduct an investigation following a Formal Complaint and Notice of Allegations. During all meetings and interviews the parties may be accompanied by an advisor of their choice, which can be, but is not required to be an attorney. During the investigation stage of the grievance process, the advisor's role is limited to assisting, advising, and/ or supporting a Complainant or

Respondent. An advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent during the investigation phase of the grievance process.

6.3.1 Opportunity to Provide Information and Present Witnesses: Each party will be provided an equal opportunity to provide information to the investigator and present witnesses for the investigator to interview. The information provided by the parties can include inculpatory (evidence that may support a finding or conclusion that Respondent engaged in Sexual Harassment) and exculpatory evidence (evidence that may support a finding or conclusion that a Respondent did not engage in Sexual Harassment). The witnesses can include both fact witnesses and expert witnesses.

6.3.2 Opportunity to Inspect and Review Evidence: Each party will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which Cooley does not intend to rely upon in reaching a determination regarding responsibility. This review includes inculpatory and exculpatory evidence that is obtained by a party, witness, or other source. Each party and their advisor (if any) will be provided an electronic copy of the evidence for inspection and review. The parties will have ten (10) business days to review and submit a written response to the investigator. The investigator will consider the written responses prior to completing an investigative report. All evidence provided during the inspection and review phase will be available at any hearing for the parties to use during the hearing, including for purposes of cross examination.

6.3.3 Investigative Report: Following the opportunity to inspect and review evidence directly related to the allegations raised in the Formal Complaint, the investigator will create an investigative report that fairly summarizes relevant evidence obtained during the investigation.

6.3.4 Review of the Investigative Report: At least ten (10) Business Days prior to a hearing, the investigator will provide each party and the party's advisor (if any) an electronic copy of the investigative report for their review and written response.

6.3.5 Investigation Time Frame: The investigation of a Formal Complaint will be concluded within 90 Business Days of the filing of a Formal Complaint. The parties will be provided updates on the progress of the investigation, as needed.

6.4 Live Hearing: After the investigation, Cooley will provide for a live hearing for all Formal Complaints of Sexual Harassment that have not been dismissed per Section 5.2 or resolved by informal resolution under Section 8. At the request of either party, or at the discretion of the Title IX Coordinator, Cooley will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the other party or witness answering questions.

6.4.1 Information at the Hearing: The following information/evidence will be available in electronic form at the hearing:

(1) Evidence from the investigation, including the evidence directly related to the allegations that was reviewed by the parties, regardless of whether it was incorporated into the report.

(2) The investigation report and any attachments/appendices.

6.4.2 Decision-maker: The decision-maker will be appointed by Cooley and will not be the Title IX Coordinator or investigator. The decision-maker will be trained, impartial, and without a conflict of interest. The decision-maker will be a Cooley employee or external individual designated by Cooley.

6.4.3 Challenge to the Decision-maker: Either party may challenge the appointment of a decision-maker, based on conflict of interest or bias, in writing to the Title IX Coordinator, no less than five (5) Business Days prior to the scheduled hearing.

6.4.4 Advisor's Role at the Hearing: Each party must have an advisor present at the hearing. The advisor's role is limited to supporting, advising, and assisting the party during the hearing and conducting questioning (cross-examination) of participants. Advisors are required to follow rules of decorum enforced by the decision-maker. Failure to follow the rules of decorum by an advisor may result in removal of an advisor from the hearing. If a party does not have an advisor present at the live hearing, Cooley will appoint the party with an advisor without fee or charge.

6.4.5 Recording of the Hearing: Cooley will create an audio or audiovisual recording of all live hearings and make the recording available to the parties for inspection or review.

6.4.6 Hearing Process Facilitator: Cooley may designate a hearing process facilitator to coordinate the hearing, including, but not limited to, coordination and scheduling of the hearing; the logistics of physical or virtual rooms for parties and/or witnesses, including separation of the parties; ensuring all technology is working appropriately; ensuring the parties have access to electronic documents during the hearing; distributing materials; etc. The facilitator may also be the Title IX Coordinator. The facilitator may invite the parties and their advisors, separately, to a meeting prior to the hearing to review the hearing process for the purpose of ensuring a smooth hearing. This meeting is separate from the pre-hearing conference discussed below.

6.4.7 Pre-Hearing Matters: In order to streamline the hearing process, the decision-maker may request the submission of questions prior to the hearing through electronic submission and/or a pre-hearing conference.

(1) Pre-Hearing Submission of Questions: The decision-maker may request the parties submit questions, in writing, prior to the hearing. This submission does not preclude the advisor from asking additional questions live during the hearing. The decision-maker may allow for the pre-hearing submission of questions regardless of whether a pre-hearing conference occurs.

(2) Pre-Hearing Conference: The decision-maker may hold a pre-hearing conference to further streamline the live hearing, especially in complex cases involving multiple Complainants, Respondents and/or a significant number of witnesses. During the pre-hearing conference, parties and their Advisors will meet with the decision-maker separately to review written questions previously submitted and/or to submit, in writing, any questions they wish to ask during the live hearing so that the decision-maker can be prepared to respond to the relevancy of said questions during the live hearing. The decision-maker may discuss any preliminary relevancy determinations regarding submitted questions and/or discuss alternative ways in which to ask questions; however, the decision-maker will make any final relevancy determinations in real-time, orally, during the live hearing. This conference does not preclude the advisor from asking additional questions live during the hearing.
At the pre-hearing conference, the decision-maker may also hear arguments regarding the relevance of the evidence identified in the investigation report as relevant or not relevant, and/or directly related to the allegations.

(3) Hearing Documents: The decision-maker or hearing facilitator will provide parties with a copy of all materials provided to the decision-maker about the matter.

(4) Accommodation Requests: Participants in need of disability related accommodations and/or interpretation services during the hearing must contact the Title IX Coordinator with said requests five (5) days prior to the hearing.

6.4.8 Participants in the Hearing. Participants at the hearing include the decision-maker, the investigator(s) who conducted the investigations, the parties, advisors to the parties, witnesses and anyone providing authorized accommodations. In addition, Cooley may have a hearing facilitator present. Any witnesses scheduled to participate in the hearing must have been first interviewed by the investigator (s) or have provided a written statement or answered questions from the investigator in writing.

The decision-maker will provide the names of all persons participating in the hearing to the parties at least seven (7) days prior to the live hearing.

6.4.9 Hearing Process and Phases: The live hearing will include the following phases:

(1) Notice of Hearing: After the investigative report has been completed and at least ten (10) business days prior to the date set for the hearing, the parties and their Advisors (if any) will be provided with a Notice of the

Hearing. The Notice will include the date, time, location, name of the decision-maker, names of all participants in the hearing, and the location (virtual or in person) of the hearing.

(2) **Opening Statements:** Each party will have the opportunity to present an opening statement to the decision-maker.

(3) **Questioning of Hearing Participants:** The investigator will be the first witness to provide information. The investigator will submit their investigation report and describe the evidence and information gathered in their investigation. The parties and witnesses will then be called in an order determined by the decision-maker. Questioning of parties and witnesses will occur in the following manner:

i. **By the Decision-maker**: The decision-maker will ask initial questions of the participants at the hearing.

ii. **By the Advisors**: After the decision-maker asks questions of a participant, each party's advisor will be permitted to ask relevant questions and follow up questions orally, directly, and in real time of the participant. The parties are never permitted to ask questions of participants directly. The questioning of participants by advisors will be conducted in the following manner:
    - A question is asked by an advisor
    - Before participant answers the questions, the decision-maker determines whether the question is relevant
    - If the question is determined relevant by the decision-maker, the participant answers the question
    - If the question is determined not to be relevant by the decision-maker, the decision-maker must explain the decision to exclude a question as not relevant.

iii. **Evidence and Questions Excluded:**
    - **Sexual Predisposition or Prior Sexual Behavior of the Complainant:** 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 and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

- **Privileged Information:** No person will be required to disclose information protected under a legally recognized privilege. The decision-maker must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
- **Medical Records:** Evidence or 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, are not permitted to be used during a hearing unless the party provides voluntary, written permission to do so for the grievance process within this Policy.

(4) Closing Statements: Each party will have the opportunity to present a closing statement to the decision-maker.

(5) Determination Regarding Responsibility: After the live hearing, the decision-maker will issue a written determination regarding responsibility using the preponderance of the evidence standard. The decision-maker will provide the Complainant and the Respondent with the written determination simultaneously. The determination regarding responsibility becomes final either on the date that Cooley 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. The written notice will include:

- Identification of the allegations potentially constituting Sexual Harassment;
- 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;
- Findings of fact supporting the determination;
- Conclusions regarding the application of this Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions that Cooley imposes on the Respondent, and whether remedies designed to restore or preserve equal access to Cooley's education program or activity will be provided by Cooley to the Complainant[3]; and

[3] The Title IX Coordinator is responsible for the implementation of any remedies.

- The procedures and permissible bases for the Complainant and Respondent to appeal.

Section 7: Appeals: Either party may appeal the determination regarding responsibility, or the dismissal of a Formal Complaint or any allegations therein within three (3) Business Days of the receipt of the determination regarding responsibility or dismissal. The appeals must be made in writing and delivered to the Title IX Coordinator.

7.1 Bases for Appeal: Appeals of the determination of responsibility or the dismissal of a Formal Complaint may be made on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- 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; or
- The Title IX Coordinator, investigator, or decision-maker 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.

7.2 Appeal Procedures: If an appeal is submitted, Cooley will

(1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.

(2) Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator or the Title IX Coordinator.

(3) Provide the non-appealing party with five (5) Business Days from receipt of the notification of appeal to submit a written statement in support of the outcome of the determination or dismissal.

(4) Issue a written decision describing the result of the appeal and the rationale for the result which can be one of the following:

- Affirm the decision-maker's determination regarding the Respondent's responsibility and affirm the disciplinary sanctions and remedies, if applicable;
- Affirm the decision-maker's determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;
- Remand the process back to the hearing stage for the decision-maker to remedy any procedural irregularity or consider any new evidence;
- Reverse the decision-maker's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
- Affirm or amend the sanctions and/or remedies outlined in the determination issued under this Policy.

(5) Provide the written decision simultaneously to both parties.

7.3 Appeal Timeframe: The appellate decision-maker will release the written decision within twenty (20) Business Days of receiving the appeal.

Section 8: Informal Resolution Process. At any time after a Formal Complaint has been signed and before a determination regarding responsibility has been reached, the parties may voluntarily agree to participate in an informal resolution facilitated by Cooley that does not involve a full investigation and adjudication. Types of informal resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, and restorative justice and resolution by agreement of the parties.

8.1 Informal Resolution Notice: Prior to entering the informal resolution process, Cooley will provide the parties a written notice disclosing:

(1) The allegations;

(2) The requirements of the informal resolution process, including the right of any party to withdraw from the informal resolution process and resume the grievance process and the circumstances which preclude parties from resuming a Formal Complaint arising from the same allegations;

(3) Consequences resulting from the informal resolution process, including that the records will be maintained for a period of seven (7) years but will not be used by investigators or decision-makers if the formal grievance process resumes.

8.2 Informal Resolution Agreement: Prior to entering the informal resolution process, the parties must voluntarily agree in writing to the use of the informal resolution process.

8.3 Informal Resolution Availability: The informal resolution process is not permitted to resolve allegations that an employee committed Sexual Harassment against a student.

8.4 Informal Resolution Time Frame: Informal resolutions of a Formal Complaint will be concluded within 45 days of notice to Cooley that both parties wish to proceed with the informal resolution process. Such notice that the parties wish to proceed with an informal resolution process will "pause" the counting of the time frame to conclude the Grievance Process of this Policy, should the informal resolution process fail and the parties continue with the Grievance Process.

8.5 Informal Resolution Documentation. Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven (7) years. However, no recording of the informal resolution process will be made and all statements made during the informal resolution process will not be used for or against either party (and the decision-maker and/or appellate decision-maker may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.

Section 9: Emergency Removal and Administrative Leave.

9.1 Emergency Removal: At any time after the Title IX Coordinator is on notice of Sexual Harassment, Cooley may remove a Respondent on an emergency basis. Cooley will only conduct an emergency removal after:

(1) Undertaking an individualized safety and risk analysis,
(2) Determining that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and
(3) Providing the Respondent with notice and an opportunity to challenge the decision to the Title IX Coordinator, within two (2) Business Days following the removal.

9.2 Administrative Leave: Cooley may place a non-student employee Respondent on administrative leave during the pendency of the grievance process in this Policy.

Section 10: Recordkeeping: Cooley will maintain all of the documentation related to reports of Sexual Harassment, Formal Complaints, the grievance process, and information resolution process for seven years in accordance with state and federal records laws and requirements. The documentation of all records are private and confidential to the extent possible under law. Student records of the grievance process are disciplinary records under the Family Education Rights and Privacy Act (FERPA). Employee records of the grievance process are subject to applicable state laws and included in the employee's official employment record.

Section 11: Additional Conduct Violations Related to This Policy: Alleged violations of the terms in this section will be sent to the Dean of Students for Lansing student Respondents or to Dean of Florida for Tampa Bay students, or to the Senior Vice President for Operations & Finance for employee Respondents for investigation and adjudication under the Cooley Student Policy Manual and the Employee Manual.

Section 12: Modification and Review of the Policy: Cooley reserves the right to modify this Policy to take into account applicable legal requirements. Cooley will regularly review this Policy to determine whether modifications should be made.

ADDENDUM A – APPLICABLE STATE LAWS

Florida Laws

Domestic Violence and Dating Violence

741.28 "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.
"Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

784.046(d): "Dating violence" means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

1. A dating relationship must have existed within the past 6 months;
2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

Rape and Statutory Rape are classified under Sexual Battery in Florida

784.046(c): "Sexual violence" means any one incident of:

1. Sexual battery, as defined in chapter 794;
2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age;
3. Luring or enticing a child, as described in chapter 787;
4. Sexual performance by a child, as described in chapter 827; or
5. Any other forcible felony wherein a sexual act is committed or attempted,

794.011(1)(h) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

794.011 (2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141.

(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(4)(a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

Stalking

784.048(2) Stalking: A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking

784.048 (3) Aggravated Stalking: A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking

784.048(1)(a): "Harass" means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.
784.048(1)(d) "Cyberstalk" means:

1. To engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; or

2. To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose.

826.04 Incest.—Whoever knowingly marries or has sexual intercourse with a person to whom he or she is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece, commits incest, which constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. "Sexual intercourse" is the penetration of the female sex organ by the male sex organ, however slight; emission of semen is not required.

Michigan Laws

Domestic Assault:
Michigan Compiled Laws Chapter §400.1506
(b) **"Dating relationship"** means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.
(d) **"Domestic violence"** means the occurrence of any of the following acts by a person that is not an act of self-defense:
(*i*) Causing or attempting to cause physical or mental harm to a family or household member.
(*ii*) Placing a family or household member in fear of physical or mental harm.
(*iii*) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
(*iv*) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
(e) "Family or household member" includes any of the following:
(*i*) A spouse or former spouse.
(*ii*) An individual with whom the person resides or has resided.
(*iii*) An individual with whom the person has or has had a dating relationship.
(*iv*) An individual with whom the person is or has engaged in a sexual relationship.
(*v*) An individual to whom the person is related or was formerly related by marriage.
(*vi*) An individual with whom the person has a child in common.
(*vii*) The minor child of an individual described in subparagraphs (*i*) to (*vi*).
(f) "Fund" means the domestic violence prevention and treatment fund created in section 5. 2

Sexual Assault *(includes Statutory and Incest)*

§750.520b First Degree

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(*i*) The actor is a member of the same household as the victim.

(*ii*) The actor is related to the victim by blood or affinity to the fourth degree.

(*iii*) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(*iv*) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.

(*v*) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses their employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(*vi*) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident, and the sexual penetration occurs during the period of that other person's residency. As used in this subparagraph, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111 .

(c) Sexual penetration occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(*i*) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(*ii*) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (f).

(e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:

(*i*) When the actor overcomes the victim through the actual application of physical force or physical violence.

(*ii*) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.

(*iii*) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the

ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(*iv*) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.

(*v*) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

(g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(*i*) The actor is related to the victim by blood or affinity to the fourth degree.

(*ii*) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

§750.520c Second Degree

(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(*i*) The actor is a member of the same household as the victim.

(*ii*) The actor is related by blood or affinity to the fourth degree to the victim.

(*iii*) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

(*iv*) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.

(*v*) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses their employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(*vi*) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident and the sexual contact occurs during the period of that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111 .

(c) Sexual contact occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(*i*) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(*ii*) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f). 1

(e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(*i*) The actor is related to the victim by blood or affinity to the fourth degree.

(*ii*) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.

(j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g , who knows that the other person is under the jurisdiction of the department of corrections.

(k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.

(*l*) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

§750.520d Third Degree

(1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age and under 16 years of age.

(b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(*i*) to (*v*). 1

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual penetration occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this

subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:

(*i*) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(*ii*) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses their employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(f) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:

(*i*) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(*ii*) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses their employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(g) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home, in which that other person is a resident, that other person is at least 16 years of age, and the sexual penetration occurs during that other person's residency. As used in this subdivision, “child care organization”, “foster family home”, and “foster family group home” mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

§750.520e Fourth Degree

(1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.

(b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the following circumstances:

(*i*) When the actor overcomes the victim through the actual application of physical force or physical violence.

(*ii*) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.

(*iii*) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute that threat. As used in this subparagraph, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(*iv*) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(*v*) When the actor achieves the sexual contact through concealment or by the element of surprise.

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is their client or patient and not their spouse. The consent of the victim is not a defense to a prosecution under this subdivision. A prosecution under this subsection shall not be used as evidence that the victim is mentally incompetent.

(f) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:

(*i*) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(*ii*) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses their employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(g) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:

(*i*) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(*ii*) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the

United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses their employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(h) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home, in which that other person is a resident, that other person is at least 16 years of age, and the sexual contact occurs during that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111 .

Stalking § 750.411h

(e) a willful course of conduct involving repeated or continuing harassment that would cause reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes victim to feel such. Aggravated stalking: stalking and violation of restraining order or injunction, violation of probation, pretrial release or bond release, or threats against victim, victim's family or an individual living with victim; or previous stalking conviction