

## APPENDIX F

### Board Policy 402: SEXUAL AND OTHER FORMS OF HARASSMENT

The Law School is committed to educational and employment environments that are free from discrimination and harassment by, between, and against its students, faculty, and other employees. The Law School abides by all local, state, and federal laws and regulations that prohibit discrimination and harassment. This includes Title IX of the Education Amendments of 1972 and American Bar Association Standard 211(a), which provides that “a law school shall foster and maintain equality of opportunity in legal education, including employment of faculty and staff, without discrimination or segregation on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability.”

For these reasons, and to further the Law School’s Professionalism Plan, the Board of Directors has adopted this Policy Against Sexual and Other Forms of Harassment, which replaces the Policy 402 adopted January 18, 1992 and amended May 17, 2003.

If you have questions about how Title IX applies, contact one of the Law School’s Title IX Coordinators: **Amy Timmer**, Associate Dean of Students and Professionalism (for students), at [timmera@cooley.edu](mailto:timmera@cooley.edu); or **Kathy Conklin, Vice President of Operations Finance** (for employees), at [conklink@cooley.edu](mailto:conklink@cooley.edu). You may also contact the U.S. Department of Education’s Office of Civil Rights.

#### I. Harassment Defined

While sexual harassment is the most recognized form of harassment, any harassment of a Law School student, faculty member, or other employee is prohibited by this Policy when an individual engages in conduct that creates an offensive, hostile, or intimidating employment or educational environment and that is based on one or more of the following protected characteristics:

- gender or sexual orientation;
- age;
- race or color;
- ethnicity or nationality;
- religion, religious beliefs, or religious practices;
- disability or need for an accommodation;
- pregnancy, marital, or familial status;
- height or weight;
- veteran status; or
- any other characteristic protected by law or regulation.

The Law School will determine whether harassment that violates this Policy has occurred by considering (1) the following definitions and applicable laws and regulations; (2) the nature of the complaint; and (3) the circumstances surrounding the harassment alleged to have occurred.

Within the Law School's educational community, it is expected that students and faculty members will engage in robust and respectful academically oriented exchanges, which may involve passionately held but diverse and conflicting viewpoints. The Law School understands that classroom or other discussions with legitimate educational purposes may sometimes involve issues of race, gender, sexual orientation, or other legally protected characteristics. When these exchanges occur respectfully, even if heatedly, and do not violate the standards described below, there will be no basis for finding that harassment prohibited by this Policy has taken place.

*A. Sexual Harassment Defined*

Sexual harassment is any subjectively unwelcome, severe or pervasive conduct of a sexual nature toward another person (including a person of the same gender), such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, that has either the purpose or effect of:

- Creating an objectively offensive, intimidating, or hostile educational or work environment that denies or materially restricts an individual's ability to fully enjoy and participate in the terms and conditions or benefits of education or employment; or
- Conditioning educational or employment benefits or reprisals on the individual's response to demands for sexual interaction.

Acts of sexual violence (including, for example, but not limited to, acts such as rape, sexual assault or battery, or sexual coercion) are considered a form of sexual harassment that violates this Policy.

Specific examples of other forms of sexual harassment include, but are not limited to:

- Unwelcome or unwanted sexual advances;
- Demeaning acts of aggression or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of an overt sexual nature;
- Oral, written, or any other form of graphic communication or distribution of materials of a sexual nature;
- Threats of reprisal against, or promises of advantage for, a person's academic standing, grade, or terms and conditions of employment conditioned on a student, faculty member, or employee's response to sexual demands or requests; or
- Any other unwelcome conduct of a sexual nature that creates a hostile, intimidating, or offensive working or educational environment.

*B. Other Forms of Harassment Defined*

Any form of subjectively unwelcome, severe or pervasive conduct or communication, whether physical, written, oral, or electronic, will constitute harassment that violates this Policy when the conduct or communication:

- Demeans, intimidates, or shows hostility toward an individual or group based on a person's gender or sexual orientation; race or color; age; ethnicity; nationality; religion, religious beliefs, or religious practices; height; weight; disability or need for an accommodation; pregnancy, marital or familial status; veteran status; or any other characteristic protected by law or regulation; and
- Has the purpose or effect of creating an objectively offensive, intimidating, or hostile educational or work environment that denies or materially restricts an individual's ability to fully enjoy and participate in the terms and conditions or benefits of education or employment.

## **II. All Forms of Harassment are Prohibited**

The Law School strictly prohibits all forms of harassment by, between, or against its students, faculty members, and other employees, as well as visitors or vendors.

If, after investigating, the Law School determines that an individual has harassed a student, faculty member, or other employee, the Law School will take prompt and effective corrective action to ensure the harassment stops and does not recur. These actions may include:

- Discipline, up to and including dismissal from employment (for Policy violations by a faculty member or other employee);
- Discipline, up to and including dismissal from enrollment (for Policy violations by a student); or
- Removal from Law School facilities (for Policy violations by a visitor, vendor, or other third party).

## **III. Reporting Guidelines**

The Law School encourages any person who believes, in good faith, that he or she has been harassed to promptly report a complaint to the Law School officials designated below. The Law School also invites reports by any person who witnesses conduct that he or she believes, in good faith, may violate this Policy.

### *Complaints by Students*

**When this person has engaged in harassing conduct toward you, ...**

**... you should report a prompt statement of concern or complaint to:**

A Law School student	The <b>Assistant Dean</b> of the alleged victim's campus, or to the <b>Associate Dean of Students and Professionalism</b>
A Law School faculty member (including adjunct faculty)	The <b>Campus Dean</b> of the alleged victim's campus
A non-faculty Law School employee	The <b>Campus Dean</b> of the campus where the harassment took place, or to the <b>Vice President of Operations and Finance</b>
A third-party on Law School premises (e.g., a visitor, vendor, etc.)	The <b>Campus Director</b> or <b>Campus Dean</b> of the alleged victim's campus

*Complaints by Law School Employees:*

<b>When this person has engaged in harassing conduct toward you, ...</b>	<b>... you should report a prompt statement of concern or complaint to:</b>
A Law School student	Your <b>Supervisor</b> or the <b>Campus Dean</b> of the campus where the employee works, or to the <b>Vice President of Operations and Finance</b>
A Law School faculty member (including adjunct faculty)	The <b>Campus Dean</b> of the campus where the employee works, or <b>Vice President of Operations and Finance</b>
A non-faculty Law School employee	Your <b>Supervisor</b> or the <b>Campus Dean</b> of the campus where the employee works, or to the <b>Vice President of Operations and Finance</b>
A third-party on Law School premises (e.g., a visitor, vendor, etc.)	The <b>Campus Director</b> or <b>Campus Dean</b> of the campus where the employee works, or to the <b>Vice President of Operations and Finance</b>

If the Law School determines that a complaint was brought in bad faith, without evidentiary support and to harm another individual's reputation, the Law School may discipline the complaining party.

#### **IV. Law School Investigation and Resolution of Complaints**

The Law School shall develop, disseminate, and provide regular training on written procedures for reporting, investigating, and promptly resolving all complaints of harassment, including sexual harassment. The identity of individuals and circumstances involved in a complaint will be kept confidential to the extent practical, without hindering the investigation, as required by law and Law School policy.

The Law School will consider all information and evidence relevant to the complaint, including any provided by the complaining party, the alleged harasser, and other witnesses (if any, including those identified by the complaining party and alleged harasser). The Law School will determine whether sexual or other harassment that violates this Policy has occurred based on a preponderance of the evidence.

The Law School may consider aggravating, mitigating, or other extenuating or situational circumstances to decide how to resolve a complaint and, if necessary, impose appropriate remedies or discipline. The Law School may take interim measures before concluding its investigation to protect a complainant from on-going harassment or retaliatory conduct related to the complaint or investigation.

Although the scope and timeframe of the Law School's investigation will vary from case to case, in all cases the Law School will try to complete its investigation of any complaint within sixty (60) calendar days of when the Law School receives the complaint.

As soon as possible after completing its investigation, and subject to FERPA (the Family Educational Rights and Privacy Act), the Law School will provide written notice to both the complaining party and accused harasser of the outcome of its investigation. In all cases, the Law School's goal will be to prevent harassment from recurring and to correct its discriminatory effects on the complaining party and others.

## **V. Retaliation is Prohibited**

The Law School strictly prohibits any person from retaliating against another person who either: (1) reports a concern or files a complaint under this Policy based on an honest, good faith perception of the events at issue; or (2) participates or otherwise cooperates in the Law School's investigation of any harassment complaint.

Any person who believes that he or she has been subjected to retaliation should make a complaint as soon as possible under the guidelines for complaints stated above.

Any person who engages in any form of retaliation that violates this Policy will be subject to discipline, including dismissal from employment or from enrollment with the law school.

## **VI. Faculty-Student Relationships are Prohibited**

The professionalism and integrity of the faculty-student relationship is at the heart of the Law School's educational mission. This relationship vests the faculty member with considerable trust, and he or she has authority and accountability as a mentor, educator, and evaluator. The educational relationship between faculty member and student must be protected from influences or activities that can interfere with learning, professionalism, and personal development, and the professionalism of the faculty as a whole must be maintained at the highest levels.

In addition to creating the potential for coercion, any romantic or sexual relationship between a Law School student and faculty member—even if consensual—jeopardizes the integrity of the educational process by creating a conflict of interest. A relationship of this type also impairs the learning environment for other students and taints the esteem in which all faculty should be held. Further, the unequal institutional power inherent in the relationship heightens the vulnerability of the student and the potential for coercion. Finally, the relationship

may expose the Law School and the faculty member to liability under laws that prohibit sexual harassment and discrimination.

For these reasons, any romantic or sexual relationship between a currently enrolled Law School student and faculty member (including adjunct faculty members) is inappropriate and therefore strictly prohibited, regardless of whether the relationship is consensual and regardless of whether a complaint has been filed about the relationship. The only exception to this prohibition is for relationships that existed before the student’s enrollment, or before the faculty member’s employment, with the Law School.

Should a relationship that violates this Policy develop, the faculty member must report the relationship to his or her department chair or campus Associate Dean, who will take any necessary steps to ensure that the student’s educational experience is not negatively affected by the relationship.

Faculty members who willfully violate this Policy may be disciplined, up to and including termination from employment.

(Adopted October 22, 2011)

### **Policy 402 Addendum Contact Information for Making Complaints**

<b>Position</b>	<b>Contact Information</b>
<b>Associate Dean – Lansing</b>	<b>Michael McDaniel</b> , ext. 4428 <a href="mailto:mcdanielm@cooley.edu">mcdanielm@cooley.edu</a>
<b>Assistant Dean – Lansing Campus</b>	<b>Mable Martin Scott</b> , ext. 2721 <a href="mailto:martinm@cooley.edu">martinm@cooley.edu</a>
<b>Associate Dean of Students and Professionalism (Lansing) (Title IX Coordinator – Students)</b>	<b>Amy Timmer</b> , ext. 2814 <a href="mailto:timmera@cooley.edu">timmera@cooley.edu</a>
<b>Campus Director – Lansing</b>	<b>Julie Mullens</b> , ext. 2616 <a href="mailto:mullensj@cooley.edu">mullensj@cooley.edu</a>
<b>Associate Dean – Grand Rapids</b>	<b>Nelson Miller</b> , ext. 6963 <a href="mailto:millern@cooley.edu">millern@cooley.edu</a>
<b>Assistant Dean – Grand Rapids</b>	<b>Tracey Brame</b> , ext. 6984 <a href="mailto:bramet@cooley.edu">bramet@cooley.edu</a>
<b>Campus Director – Grand Rapids</b>	<b>Joan Rosema-David</b> , ext. 6985 <a href="mailto:rosemaj@cooley.edu">rosemaj@cooley.edu</a>
<b>Associate Dean – Auburn Hills</b>	<b>Joan Vestrand</b> , ext 7717 <a href="mailto:vestrandj@cooley.edu">vestrandj@cooley.edu</a>
<b>Assistant Dean – Auburn Hills</b>	<b>Lisa Halushka</b> , ext. 7737 <a href="mailto:halushkl@cooley.edu">halushkl@cooley.edu</a>
<b>Campus Director – Auburn Hills</b>	<b>Audra Foster</b> , ext. 7707 <a href="mailto:fostera@cooley.edu">fostera@cooley.edu</a>
<b>Associate Dean – Tampa Bay</b>	<b>Ronald Sutton</b> , ext. 5112 <a href="mailto:suttonr@cooley.edu">suttonr@cooley.edu</a>
<b>Assistant Dean – Tampa Bay</b>	<b>Katherine Gustafson</b> , ext. 5107 <a href="mailto:gustafsk@cooley.edu">gustafsk@cooley.edu</a>
<b>Campus Director – Tampa Bay</b>	<b>Dionnie Wynter</b> , ext. 5105 <a href="mailto:wynterd@cooley.edu">wynterd@cooley.edu</a>

<b>Vice President of Operations and Finance (Lansing)</b> <b>(Title IX Coordinator – Employees)</b>	<b>Kathy Conklin, ext. 2208</b> <a href="mailto:conklink@cooley.edu">conklink@cooley.edu</a>
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## **Procedure for Resolving Complaints Under Law School Board Policy 402 Against Sexual and Other Forms of Harassment**

This policy is adopted pursuant to Law School Board Policy 402 Against Sexual and Other Forms of Harassment (“the Policy”) and describes the procedures to be followed when a person files a complaint (“Complaint”) alleging a violation of the Policy.

### **Complaint**

Any person who believes that he or she has been subjected to harassment in violation of the Policy may file a Complaint. Complaints should be brought in good faith. Persons found to have purposely filed a bad faith Complaint may be subject to discipline under other appropriate Law School policies.

A person who files a Complaint is known as the Complainant. A person against whom a Complaint is filed is known as the Respondent.

Whether a person files a Complaint under the Policy does not affect his or her right to file a separate complaint with the appropriate state or federal agency having jurisdiction over such complaints (e.g., the Department of Education’s Office of Civil Rights, the federal Equal Employment Opportunity Commission, or the Michigan Department of Civil Rights, or, for complaints alleging sexual violence, the local police). Moreover, the Law School will investigate and attempt to resolve a Complaint even if the events described in the Complaint are the subject of a separate criminal investigation or proceeding by state or local authorities.

### **Complaint Process**

Except as noted below, all Complaints will be received, investigated, and resolved according to the procedures set forth below.

Complaints against a student will be received, investigated, and resolved under the Law School’s Disciplinary Procedures policy, set forth in Appendix I of the Student Policy Manual. A person wishing to initiate a Complaint against a student should follow the procedure in Appendix I in the Student Policy Manual, although the Complaint may be filed with any person designated in Section III of the Policy to receive Complaints.

#### *Filing*

Complaints should be filed with any person designated by the Policy to receive a Complaint, depending on who the Complaint is against. See Section III of the Policy, “Reporting Guidelines,” for more information about the person or office to whom a Complaint should be made.

The individuals and offices available to receive Complaints under the Policy were selected to give all members of the Law School community the opportunity to initiate a Complaint in a place where they will feel comfortable doing so. These individuals and offices have the responsibility, after speaking with the Complainant or reviewing the written Complaint, to ensure that the Complaint is directed to the proper office or individual for investigation, as explained further below.

If a Complaint is filed with an office or individual not designated to receive Complaints, the Complaint will be forwarded to an appropriate official or office for evaluation, investigation, and resolution.

### *Time for Filing*

Unless there are extenuating circumstances, Complaints should be filed within 180 days of the last conduct complained of. Although the Law School will investigate and attempt to resolve Complaints brought later than 180 days, the loss or unavailability of evidence or witnesses, or inadequate memories, may make doing so impractical.

### *Form*

Although verbal Complaints will be handled under these procedures, the Complaint should be in writing, and may be submitted in any reasonable form (e.g., paper, email, etc.).

The Complaint should describe in detail the conduct believed to violate the Policy. The Complainant should attempt to identify, in the Complaint, any evidence and witnesses that he or she believes will substantiate the Complaint.

### *Who Handles Investigation and Resolution*

The Law School has designated specific offices and individuals to investigate complaints of harassment that may violate the Policy. Depending upon whether the Respondent is a student, a faculty member, a staff member, or a third party (e.g., a Law School vendor), the investigation will be conducted by the designated office or individual with the appropriate expertise and jurisdiction to do so. The offices and individuals responsible for receiving Complaints are set forth in Section III of the Policy, "Reporting Guidelines."

In any particular case, the Associate Dean or the Vice President of Operations and Finance may designate which office or individual will investigate and attempt to resolve a Complaint. The Law School will ensure that a person who is the subject of a Complaint, or who may be a material witness to events described in a Complaint, will not be assigned to investigate that Complaint. The Office of Human Resources, if it is not conducting the investigation, or the Office of the General Counsel will provide advice or assistance throughout the investigation and resolution procedures as necessary.

Generally speaking, Complaints will be investigated and resolved by the following persons or offices, regardless of to whom the Complaint was first made. Any office or person

who investigates a Complaint may involve other offices or persons as necessary to ensure the prompt and fair resolution of a Complaint.

- Complaints against a staff member: *The Office of Human Resources*
- Complaints against a faculty member: *The Associate Dean of the campus where the alleged harassment took place, in cooperation with the Office of Human Resources*
- Complaints against a student: *See “Disciplinary Procedures,” Appendix I, Section 1.04 of the Student Policy Manual*
- Complaints against third parties (e.g., a Law School vendor): *The Associate Dean of the campus where the alleged harassment took place*

#### *Opportunity for Informal Resolution*

In most cases, upon the Law School’s receipt of the Complaint, the Complainant will be advised of the opportunity to attempt an informal resolution of the Complaint. If the Complainant chooses to proceed informally, he or she retains the right to stop proceeding informally at any time prior to resolution and request a formal investigation and resolution of his or her Complaint. Informal resolution will not be attempted for Complaints involving allegations of sexual assault or violence.

Within seven (7) days of the Law School’s receipt of a Complaint that the Complainant agrees to attempt to resolve informally, the Respondent will be notified of the name of the Complainant and the allegations. The Respondent will be asked to respond to the allegations, in writing, within fifteen (15) days of notification of the Complaint.

The Respondent may decline to participate in an informal attempt to resolve the Complaint at any time. In that case, a formal investigation and resolution will proceed.

The goal of an informal resolution is to provide a forum for the Complainant and Respondent to meet face-to-face and, with the aid of a third party trained in mediation and other alternative dispute resolution techniques, discuss the Complainant’s concerns and whether an informal resolution is possible. The third party will review whatever evidence and interview any witnesses the Complainant or Respondent identifies for that purpose. Informal resolution of the Complaint will include a written acknowledgment of the informal resolution, prepared by the mediating party and signed by the Complainant and the Respondent. Prior to signing a written resolution acknowledgment for this purpose, both the Complainant and the Respondent will be advised that the Associate Dean, Vice President of Operations and Finance, or General Counsel will review the written resolution acknowledgment and determine whether action should be taken beyond that which formed the basis for informal resolution (e.g., additional training regarding harassment or further discipline under appropriate Law School policies).

The Law School will attempt to conclude informal resolution proceedings within thirty (30) days of receipt of Respondent's response to notification of the Complaint. Should informal proceedings not result in a resolution for any reason, a formal investigation and resolution will occur.

#### *Formal Investigation and Resolution*

Within seven (7) days of the Law School's receipt of a Complaint, the Respondent will be notified of the Complaint and the allegations. The Respondent will be asked to respond to the allegations, in writing, within fifteen (15) days of notification of the Complaint. The Respondent will also be advised that his or her failure to cooperate in the investigation may be separate grounds for action against him or her, including disciplinary action if appropriate.

Except when the Law School has reasonable grounds to believe that revealing the Complainant's identity to the Respondent may bring adverse consequences to the Complainant, notification to the Respondent of the Complaint will include Complainant's identity. Should Complainant request that his or her identity be kept confidential, the Law School will evaluate the request in the context of its responsibility to provide an educational environment free from harassment for all students and employees. In doing so, the Law School may weigh the request for confidentiality against any one or more of the following factors: the seriousness of the alleged harassment; whether there have been other harassment complaints about the same individual; and the Respondent's right to receive information about the allegations to the extent it is maintained in an "educational record" about the Respondent. The Law School cannot guarantee absolute confidentiality for any Complaint.

In the notification of the Complaint, Respondent will be encouraged to identify, in his or her response, all evidence and witnesses that may be relevant to the Complaint and the Law School's investigation.

Both the Complainant and the Respondent will be advised of their obligations to preserve all evidence (including electronically stored information, such as email communications, text messages, digital files, etc.) that may assist the Law School in its investigation of the Complaint.

The person or office responsible for investigating the Complaint will undertake one or more of the following actions:

- meet with the Complainant or Respondent as often as is deemed necessary;
- interview witnesses (including, but not limited to, those identified by the Complainant or Respondent as having relevant information);
- review documents, communications, records, or any other information (including electronically stored information) that may be relevant;
- request written statements from the Complainant or Respondent; and
- make any other appropriate inquiries relevant to the Complaint.

When sufficient investigation has been conducted to reasonably determine, based on a preponderance of the evidence, whether harassment has occurred, the designated investigating official shall prepare a written report that summarizes (1) the nature of the Complaint; (2) the evidence; and (3) if harassment is determined to have not occurred, the basis for such conclusion, including whether remedial action should be taken notwithstanding the determination that no harassment occurred; or (4) if harassment is determined to have occurred, the remedial action that will be taken to ensure the harassment stops and does not recur.

As soon as possible after completing its investigation, and subject to FERPA (the Family Educational Rights and Privacy Act), the Law School will provide written notice to both the Complainant and Respondent of the outcome of its investigation.

If harassment is found to have occurred in a Complaint against a staff member, a copy of the written investigation report will be shared with the staff member's supervisor and the remedial action will be imposed (including discipline, if appropriate).

If harassment is found to have occurred in a Complaint against a third party (e.g., a Law School vendor), a copy of the written investigation report will be shared with the Vice President of Operations and Finance, who shall determine the appropriate implementation of remedial action (including removal from the Law School's premises, if appropriate).

In the case of a Complaint against a faculty member, a copy of the written investigation report will be sent to the Dean, who may (1) request to review the evidence on which the report's findings were based or additional evidence and (2) accept, reject, or modify the remedial action set forth in the report. If remedial action against or involving a faculty member is to include dismissal, the dismissal will be imposed in accordance with Board Policy 201.

#### *Remedial Actions Pending Investigation*

The Law School may impose interim remedial measures before conducting and concluding its investigation if doing so is deemed necessary to protect a Complainant from on-going harassment or retaliatory conduct related to the Complaint or investigation.

#### *Time of Investigation*

Absent extenuating circumstances, an investigation will be completed promptly so that a decision can be rendered within sixty (60) days of receipt of the Complaint. If this is not possible, the Complainant and Respondent will be informed of the status of the investigation within sixty (60) days, and thereafter as necessary.

#### *No Right to Participation by Outside Counsel*

Although Complainant and Respondent are each separately free to consult with outside legal counsel of their own choosing and expense, outside legal counsel will not be permitted to

participate or appear on behalf of a Complainant or Respondent in any informal or formal proceeding related to the Law School's investigation and resolution of a Complaint.

### *Appeal*

Except as provided in other policies, there is no right to appeal either the conclusion of whether harassment occurred or the remedial action(s) to be imposed.

### *Confidentiality*

A confidential record of all Complaints, including their disposition, will be maintained by the Law School's Title IX Coordinators. In conjunction with the Law School's Title IX Coordinators, the General Counsel's Office will be informed of, and maintain a confidential record of, the nature of all Complaints of harassment investigated by other offices, the names of complaining parties and respondents, and the final disposition of all Complaints.

### **Training**

The General Counsel and Vice President of Operations and Finance shall be responsible for developing and providing regular training regarding the Policy and the Law School's procedures for handling and resolving Complaints under the Policy.

(Eff. October 22, 2011)