

Part 3: Nondiscrimination and Sexual Harassment

The following grievance procedures were revised in September 2000.

General Policies and Procedures

A. POLICIES

1) Nondiscrimination

Bates values the diversity of persons, perspectives, and convictions. Critical thinking, rigorous analysis, and open discussion of a full range of ideas lie at the heart of the College's missions as an institution of higher learning. The College seeks to encourage inquiry and reasoned dialogue in a climate of mutual respect.

Bates does not discriminate on the basis of race, color, national or ethnic origin, religion, sex, sexual orientation, gender identity or gender expression, marital or parental status, age, or disability, in the recruitment and admission of its students, in the administration of its educational policies and programs, or in the recruitment and employment of its faculty and staff.

Note: "sexual orientation, gender identity, and/or gender expression" shall have the same meaning as the term "sexual orientation" as it is defined in the Maine Human Rights Act.

To aid the director of affirmative action and institutional diversity in this charge, an Advisory Committee on Affirmative Action is appointed annually by the president. It is the members' responsibility to assess continually the status of their respective areas in regard to compliance. Members of the Bates community are encouraged to report instances of alleged discrimination to the director of affirmative action and institutional diversity.

For more information on the College's diversity initiative, see www.bates.edu/diversity-initiative.xml.

2) Bates College Sexual Harassment Policy

Within our academic setting, a state of trust and openness among persons is the necessary condition for intellectual inquiry and hence academic excellence. Associations between faculty, students, and staff must reflect the mutual respect for one another which is essential to the free exchange of ideas. Harassment, including sexual harassment, destroys trust and openness. When any member of the Bates community denigrates another member through unwanted sexual advances or sexual allusions, or through unwarranted references to sexuality or sexual activity, these bonds of trust and openness are broken.

Harassment, including sexual harassment, is especially serious when it involves a relationship of authority within which academic or other rewards may be experienced or perceived as related to the harassment. Among such situations are those relationships between faculty and students or between senior and junior faculty. When the imposition of unwanted sexual attention is accompanied by the promise of academic or employment rewards or reprisals, the harm can be very great. If harassment occurs between persons, one of whom has any kind of supervisory, evaluative, or other authoritative responsibility in regard to the other, it is intimidation and coercive abuse of power.

Sexual harassment is one form of illegal sex discrimination, as defined by Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, and Section 4572 of the Maine Human Rights Act, and the regulations of both the Equal Employment Opportunity Commission and the Maine Human Rights Commission. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic advancement or employment;

- b) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individuals;
- c) such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance or creating an intimidating, hostile, or offensive working or learning environment.

The state of trust that is so essential to academic work in the College is important to the associations between faculty and students; such trust also is important among non-academic staff and employees. Sexual harassment within these associations prevents or impairs the harassed person's full enjoyment of occupational or educational benefits and opportunities. It interferes with an individual's work performance and creates an offensive working environment. The employment regulations of the Maine Human Rights Commission give support to the College's policy against harassment and provide legal protection for all employees.

Whereas, it has been and is the policy of Bates College that sexual harassment has no place and will not be tolerated in this College; and whereas, the Federal Equal Employment Opportunity Commission has declared that sexual harassment constitutes illegal discrimination under Title VII of the Civil Rights Act of 1964, the president and Trustees of Bates College restates its policy that sexual harassment not be tolerated and hereby directs the president to see that appropriate steps are taken to communicate that Board's intent, as expressed in this policy to the College's faculty, staff, and students. The president shall advise the faculty, staff, and students that there are in effect adequate grievance procedures to facilitate prompt reporting of specific acts of sexual harassment at Bates, and urge the members of the College to report such acts so that appropriate action may be taken.

Bates College denounces the use of violence directed against any individual or group. We, the College community, regard sexual assault as a violent crime, a particularly heinous form of sexual harassment, whether committed by a stranger or an acquaintance on or off campus. We condemn the commission of sexual assaults and believe persons charged with such offenses should be dealt with promptly and fairly through the courts and our own judicial systems. Moreover, we rededicate ourselves to eradicating hostile settings in which our ability to work, study, live, and learn together is inhibited. Finally, we pledge assistance through the various departments of the College in aiding survivors of assault to determine how best they may regain control over their circumstances.

When offensive conduct against persons, including but not limited to assault, may occur, for which the offender may be charged within the criminal justice system for violating the criminal statutes of the State of Maine, or the United States, victims may also elect to seek redress through the College's disciplinary procedures, as well as through civil action. All members of the community are expected to conform their conduct to the requirements of the law and to the standards of the College community.

As a guide to the community, relevant provisions of the criminal law and descriptive definitions of conduct and consent will be provided in published form to all students, faculty, and staff annually. These provisions and definitions will serve to assist the College community in identifying unacceptable behavior and to provide a basis for consistent interpretation and judgment.

B. PROCEDURES

Procedures for Charges of Discrimination

The exercise of seeking advice and information is entirely voluntary and is not a prerequisite to making a formal complaint either within the College or with the Maine Human Rights Commission. Grievants who choose to file a complaint directly with the Maine Human Rights Commission must do so within 180 days (6 months) of the alleged incident(s) of discrimination. Grievants who seek informal resolution of cases of discrimination may do so in either of the following ways:

a) Voluntary Informal Consultation

There are many channels within the Bates community available for the informal resolution of incidents of discrimination. The College recommends contact with any campus support personnel who are knowledgeable about the possible avenues of resolution of discrimination claims; when in doubt, the Office of Affirmative Action and

Institutional Diversity is a reliable, confidential and supportive source of information. Others who may assist in directing inquires in the process include the health center staff, the chaplains, immediate supervisors, resident coordinators and junior advisors, members of the faculty, the Office of Human Resources, the Office of the Dean of Students, and the Office of the Dean of the Faculty. Consultations may be brought in full confidentiality; no written record is to be maintained when an informal consultation is made.

If individual action or discussion through informal resolution does not resolve the problem, grievants may, either in the company of a trusted person or alone, talk privately with the director of affirmative action regarding other steps.

b) Complaints

The director of affirmative action and institutional diversity is the primary agency to receive all complaints. If students are involved, the individuals may initially elect to discuss a complaint with one of the deans of students; a faculty member may initially discuss a complaint with the dean of faculty; or a staff member may initially discuss a complaint with the director of human resources. In each case, however, the subsequent step, if not the initial step, should be with the director of affirmative action.

There are two forms of complaints:

1) Informal Complaints

The director of affirmative action and institutional diversity may provide suggestions for resolution, help in mediating differences in views, or other channels for resolution involving skills or suggestions of others.

2) Formal Complaints

The grievant may institute formal grievance proceedings whether or not the director of affirmative action can effect a resolution. Grievants can elect to pursue any or all options, including: making a written complaint within the College's procedures, initiating a complaint to an agency outside of the College (e.g., to the Maine Human Rights Commission), if appropriate, pursuing criminal charges within the criminal justice system, or pursuing civil action within the court system. The director of affirmative action and institutional diversity will explain the elements of each process. Within the College, a written complaint is needed to initiate formal grievance procedures.

c) College Formal Grievance Procedures

Section I

- (a) Formal grievance procedures shall be available to faculty members, employees, and students of Bates College, except where students are named as accused parties. In such cases, the matter shall be heard by the Committee on Student Conduct. The procedures herein shall not apply to grievances in regard to appointment, reappointment, tenure, or promotion of faculty members as these matters are governed by Article VII of the *Rules and Procedures Governing Faculty Appointment, Reappointment, Tenure, and Promotion* contained in the *Faculty Handbook* of Bates College. The procedures herein shall be further limited to cases of improper discrimination, sexual harassment, or sexual assault. Improper discrimination shall be defined as acts in violation of applicable nondiscrimination laws or the nondiscrimination policy which appears in the official publications of Bates College.
- (b) The sole purpose of a hearing under formal grievance procedures is to determine if improper discrimination, sexual harassment, or sexual assault has occurred. A hearing board shall have no authority to invoke sanctions for improper behavior. The report of the hearing board shall be given to the president of the College for any further action.

Section II

- (a) Nothing stated herein shall be construed to prevent several complainants, in the appropriate case, from joining in a single complaint. The word "complainant," as used herein, shall refer to any person who files a complaint

NONDISCRIMINATION AND SEXUAL HARASSMENT

or to any group of persons who together file a single complaint. The word "respondent," as used herein, shall refer to any party or parties accused in the same complaint and who will be heard in the same hearing

- (b) The complainant shall file a formal complaint in writing with the director of affirmative action and institutional diversity or the director of human resources. Upon receipt of the complaint, the director of affirmative action and institutional diversity or the director of human resources shall immediately inform the respondent in writing and provide the respondent with a copy of the complaint.
- (c) In cases of multiple complainants or multiple respondents, where any individual complainant or respondent claims that his or her complaint or defense would otherwise be compromised, that party may submit a request in writing to the director of affirmative action and the director of human resources for a separate hearing. The director of affirmative action and institutional diversity and the director of human resources shall make a decision on such a request prior to submitting a request to the president for a hearing board and shall notify all parties in writing of that decision. In appropriate cases, the director of affirmative action and the director of human resources may require multiple complainants to join in a single complaint.
- (d) The director of affirmative action and institutional diversity and the director of human resources together shall determine whether the complaint on its face states facts which, if true, allege a claim of improper discrimination, as defined in applicable nondiscrimination laws or the College's nondiscrimination policy, or of sexual harassment or sexual assault. If so, the matter may proceed to a hearing; if not, the complaint shall be returned to the complainant, and no further action shall be taken unless an amended complaint is filed in accordance with Section II (b).
- (e) The director of affirmative action and institutional diversity and the director of human resources shall make their decision whether to refer the complaint to the president with a request to form a hearing board within 7 days of receipt of the complaint, unless circumstances require a longer time, in which event, they shall inform the President and all parties in writing. Once a decision is made to refer the complaint to a hearing board, all parties shall be informed in writing of the action taken.

Section III

- (a) The director of affirmative action and institutional diversity and the director of human resources, having concluded that the complaint states a claim under standards contained in Section II (d), shall provide the president of the College with a copy of the complaint and request that the president form a hearing board. At this point, no further amendments to the complaint shall be permitted.
- (b) The complainant and the respondent may each designate two members of the hearing board. The president shall choose two additional members, and a majority of the six members thus chosen shall choose a seventh member to act as chair of the board. Board members shall be selected from the then current faculty or staff of Bates College. The word "staff," as used herein, shall not include student employees. If either the complainant or respondent neglects or refuses to designate members of the hearing board, the president shall choose them. Once the hearing board is established, the president shall give a copy of the complaint to the hearing board and shall inform all parties in writing of the composition of the board.
- (c) A hearing board shall be formed within 7 days from the date on which the director of affirmative action and institutional diversity and the director of human resources inform the president of the need for a hearing. If, in exceptional circumstances, more time is necessary to form the hearing board, the President shall inform all parties in writing.

Section IV

- (a) The complainant shall, within 7 days of being notified of the formation of a hearing board, file with that board all documents and other tangible evidence available to the complainant which will be used in the

hearing in support of the complaint and a list of all witnesses whom the complainant wishes to testify at the hearing in support of the complaint. Upon receipt, the chair of the hearing board shall make these materials available to the respondent.

- (b) Within 21 days of receipt of such materials, the respondent shall file with the hearing board a written response to the charges made in the complaint, together with all documents and other tangible evidence available to the respondent which will be used in the hearing in support of any defense against the complaint and a list of all witnesses whom the respondent wishes to testify at the hearing in support of any defense against the complaint. Upon receipt, the chair of the hearing board shall make these materials available to the complainant.
- (c) The chair of the hearing board shall notify in writing all witnesses of the need for their testimony at the hearing. It is the responsibility of any member of the Bates College community who has information relevant to an issue before the hearing board to testify at the hearing or to produce documents or other tangible evidence at the request of the chair of the hearing board.
- (d) Failure, without adequate justification, to produce documents or other tangible evidence or to testify at the hearing by anyone requested to do so by the chair of the hearing board shall be reported to the president for any action he or she deems appropriate. In the event that either the complainant or the respondent shall fail, without adequate justification, to produce documents or other tangible evidence or to testify at the hearing when requested to do so by the chair of the hearing board, the hearing board may report to the president that it is unable to make a decision in the matter, and the President may take whatever action he or she deems appropriate.
- (e) After the hearing board has received evidence and witness lists from the parties, it will determine whether any additional documents, other tangible evidence, or testimony may reasonably be necessary to a determination of the facts at issue and may require any such documents or other tangible evidence from the complainant or respondent and may require documents or other tangible evidence or testimony from any third party, within or without Bates College. A determination that further evidence is necessary may be based on a request by the complainant or respondent. Should any additional documents or other tangible evidence be produced, they shall be made available to all parties. All parties shall be informed in writing of any witnesses identified by the hearing board who will testify at the hearing in addition to those already listed in the witness lists of the parties. The chair of the hearing board shall determine the date by which all evidence and all witness lists required by the hearing board shall be presented to the hearing board.
- (f) Once all documents, other tangible evidence, and all witness lists have been made available to all parties, no additions to any witness list, and no additional documents or other tangible evidence shall be considered except by a decision by the chair confirmed by a majority vote of the hearing board.
- (g) A hearing on the complaint shall commence no sooner than 7 nor later than 10 days after all documents, other tangible evidence, and all witness lists have been made available to all parties. The chair of the hearing board shall have the authority to alter these time limits if necessary and shall notify all parties in writing of a decision to do so.

Section V

- (a) The chair of the hearing board, subject only to being overruled by a majority of the board, shall rule on all questions of evidence and procedure and may make such other rules and decisions, not provided for in these procedures, as are necessary to conduct the hearing fairly and expeditiously. This includes decisions on requests from complainants and respondents for separate hearings that arise after the hearing board is formed. Only evidence that a reasonable person would rely on to make judgments in serious matters shall be admitted and be considered by the hearing board in making its findings and conclusions.

NONDISCRIMINATION AND SEXUAL HARASSMENT

- (b) The complainant and respondent may have the assistance of an attorney during the hearing; however, the role of the attorney shall be limited to observing the hearing and offering advice to the party represented. The hearing board may have the assistance of College counsel.
- (c) The members of the hearing board shall maintain the confidentiality of all aspects of the complaint, response, hearing, evidence, and its deliberations. The hearing shall be private. Only members of the hearing board, parties, attorneys, and witnesses while testifying may be present. The hearing board may exclude all but its members in order to deliberate on its findings and conclusions.
- (d) The board shall allow a reasonable time for opening and closing statements by the complainant and respondent.

Each party at the hearing shall have opportunity to pose questions to all witnesses. This shall be done either directly or through the chair, at the discretion of the chair.

- (e) The hearing shall be electronically recorded, except that the private and confidential deliberations of the hearing board shall not be recorded. The president shall have custody of the recording and may, in his or her discretion, have a transcript made of the recording after the completion of the hearing.

Section VI

- (a) The hearing board shall make specific findings of fact. The burden of proof shall be on the complainant, and the board shall make findings and conclusions in regard to the allegations in the complaint only when a majority of the board is convinced that those findings and conclusions are supported by a preponderance of the evidence.
- (b) After reaching its findings and conclusions, the board shall report them in writing, within a reasonable time, to the president of the College, the complainant, and the respondent. The president shall make a brief announcement of the nature of the complaint and the findings of the hearing board to the Bates College community without mention of the names of parties or other participants. The president shall, within his or her discretion, determine what, if any, further action he or she will take in response to the report of the hearing board. The president shall commence any such action within 7 days of delivery of the report unless he or she deems some other period appropriate, in which case, the president shall inform all parties in writing.
- (c) In accordance with Article V, Section 2 of the By-Laws of Bates College, the complainant and respondent may, in appropriate cases, seek indemnification from the College for reasonable attorneys' fees incurred for purposes of the hearing.

Section VII

The existence of these grievance procedures in no way precludes the College from taking immediate action to maintain the safety of the College community or individual members thereof.