

The accused student may consult with an attorney, but that attorney may not be involved in the College's disciplinary processes. In the very specific circumstance where the College has initiated disciplinary proceedings while a serious criminal case (arising out of the same conduct) is pending against the student in court, the student shall be allowed to have an attorney present during the College disciplinary proceeding. Even then, any attorney retained by the student has an extremely limited role as an advisor: the attorney may not make statements or ask questions at the hearing, but is simply available to advise the student during the proceedings.

Note: The Committee Co-Chairs always have the right to remove from the hearing any individual, including an attorney, whose conduct unduly interferes with the proceedings. In the event that an accused student plans to have an attorney attend the Student Conduct Committee hearing, s/he must inform the Co-Chairs in a timely manner so that the College can determine whether it wants its own attorney present.

2. Accusing Party's Rights and Responsibilities
(The rights and responsibilities described in this section are equally applicable, where relevant, to students and to faculty or other College employees who accuse a student of misconduct.)

While all cases which are brought before the Student Conduct Committee are presented by the Dean, in some cases there is a principal witness who alleges to have been injured by the accused student. This second party, the "accusing party," also has much at stake at the disciplinary hearing, and has certain rights that the process must respect. For purposes of a Student Conduct Committee hearing, a student or College employee who accuses a student of misconduct is an evidentiary witness (as distinguished from a character or expert witness). In cases involving a charge of "Actions Against Persons," the accusing party has a particular set of rights and responsibilities, noted below at c. and d.

a. The right to bring to the attention of the Dean an incident of misconduct by another student. This does not include the right to insist on a hearing before the Student Conduct Committee, since it is the Dean who has authority to conduct an investigation and to determine whether a case should go forward.

b. The right to meet with a Judicial Educator and to have an advisor, if s/he so chooses.

c. In cases of misconduct involving Actions Against Persons: the right to meet with the Co-Chairs of the SCC at a pre-hearing conference at which the accusing party may challenge, on the basis of actual bias, the presence of a member of the SCC at the hearing; to make a statement at the hearing; and to propose evidentiary witnesses, one character witness, and one expert witness; the right to be present during any testimony which relates directly to him/her and the right to pose questions through the Co-Chairs when the testimony relates directly to the accusing party; the right to be informed of the decision of the Student Conduct Committee. (The right to be present at the hearing is not absolute, however; the accusing party may not make statements while witnesses are testifying and being questioned.)

d. In cases specifically involving allegations of sexual assault, the accusing party has rights comparable to those of the accused student throughout any disciplinary process.

e. The right to be free from harassment from the accused student or other witnesses (or parties acting on their behalf) at any time during or after investigation and hearing.

f. The responsibility to testify truthfully at the hearing.

g. The responsibility to refrain from contact (direct or indirect) with accused student or other witnesses or with members of the Student Conduct Committee, when so directed by the Deans, the Student Conduct Committee, or its Co-Chairs.

h. The responsibility to make a good-faith effort at mediation when the option of mediation is chosen by all parties as an alternative method of resolution.

i. The responsibility to abide by the instructions of the Co-Chairs of the Student Conduct Committee, including instructions regarding witness testimony. (The Co-Chairs of the SCC always have the authority to remove from the hearing any individual whose conduct unduly interferes with the proceedings.)

Both the accused and accusing parties are reminded that they have a number of resources available to them when instances of misconduct are being addressed by the College. As specified in the rights and responsibilities above, both have available to them the Judicial Educator as well as an advisor from within the Bates community. There are also resources outside the College of which they may avail themselves. Any person who feels s/he has been the victim of a crime always has the option of going to local law enforcement officers and pursuing the case through the criminal court system.

The accused or accusing parties may benefit from meeting with a psychological, religious or substance-abuse counselor to discuss difficult issues and problems raised by the alleged incident of misconduct. While counselors are available through the College and confidentiality is maintained, in some instances parties to a conduct case may feel more comfortable seeking the assistance of someone not associated with the College, and they should feel free to do so.

The College Nondiscrimination and Sexual Harassment Policy

(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 mission 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 recruit-

ment 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.

To aid the Director of Affirmative Action 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.

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:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic advancement or employment;
- submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individuals;
- 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 re-dedicate 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

- 1) 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 Affirmative Action Office is a reliable, confidential and supportive source of information. Others who may assist in directing inquiries in the process include the Health Center staff, the chaplains, immediate supervisors, Residence Coordinators and Junior Advisors, members of the faculty, the Office of the Director of Human Resources, the Office of the Deans of Students, and the Office of the Dean of 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 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 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 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

These procedures are explained in the following sections.

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 Student Conduct Committee. 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 VI of the Personnel Rules and Procedures 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 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 or the Director of Human Resources. Upon receipt of the complaint, the Director of Affirmative Action 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 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 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 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 seven (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.