

Bates: Here to Help

Title IX and

Quick Escape

Civil Rights Compliance

Policy: Section V

V. Prohibited Conduct and Definitions

All members of the Bates community are entitled to an educational and employment environment free from discrimination, harassment, and bias. The sections below describe prohibited conduct; engaging in such conduct could result in disciplinary action (up to and including expulsion from the college or termination of employment) through the appropriate grievance process described in this policy.

The prohibited behaviors described below are interpreted broadly to include online or cyber manifestations of the behavior, when those behaviors occur within or have an effect on the college's education program or activities or use the Bates networks, technology, or equipment.

A. Harassment

a. Discriminatory Harassment

Discriminatory harassment refers to verbal, written, visual, or physical conduct based on or motivated by an individual's actual or perceived protected characteristic or activity as described in [Section III of this policy](#). Harassment is unwelcome conduct or behavior which is personally and objectively offensive or threatening behavior and which has the effect of unreasonably interfering with, limiting, or effectively denying an individual's educational or employment access, benefits, or opportunities. This conduct may be severe or pervasive and has the effect of impairing morale, interfering with academic or work performance, or creating an intimidating, hostile, or offensive environment.

The foregoing definition complies with federal and state anti-discrimination laws designed to protect employees (Title VII and the Maine Human Rights Act). Discriminatory harassment could apply to harassing conduct on the basis of sex or gender that does not meet the "severe and pervasive" definition under Title IX, but may meet the hostile environment threshold included in this definition.

The college recognizes that a robust learning environment often challenges community members to engage in conversations about difficult, sensitive, and sometimes controversial subjects. This policy shall not be construed to inhibit or prohibit educational

content or discussions inside or outside of the classroom that are protected by academic freedom and/or the First Amendment. The college does, however, respond to speech that addresses the impact of such speech, including providing supportive measures to students who may feel they are negatively affected by such speech.

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b. Sexual Harassment (Title IX)

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Maine regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Bates has adopted the following definition of Sexual Harassment to address the unique needs of the academic community. This definition uses plain language to assist individuals in understanding the definitions used in the federal Title IX regulations that all colleges must adopt. Verbatim definitions can be found in Appendix A. All definitions include actual and attempted offenses.

Sexual Harassment, as an umbrella category defined by the federal Title IX regulations, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. Acts of Sexual Harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment is defined as conduct on the basis of sex/gender or that is sexual in nature that satisfies one or more of the following:

1. **Quid Pro Quo:** A Bates employee conditions the provision of aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct;[\[1\]](#)
2. **Sexual Harassment:** Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a Bates education program or activity;[\[2\]](#)
3. **Sexual Assault**, defined as:
 - Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent. This includes:
 - vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact; and
 - other intentional physical contact of a sexual nature with another individual for the purposes of sexual gratification.

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- Incest: Non-forcible sexual intercourse between people who are related to each other within the degrees wherein marriage is prohibited. In the State of Maine, a person may not marry that person's parent, grandparent, child, grandchild, niece, aunt, or uncle; and
 - Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent. In the State of Maine, consent cannot be given by minors who are 14 or 15, if the actor is at least 5 years older than the minor. Consent cannot be given by minors under 14 years of age, regardless of the age of the Respondent. For this reason, any sexual act with an individual under 14 years of age is considered a felony.
4. **Dating Violence:** Violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
5. **Domestic Violence:** Violence, on the basis of sex, committed by any of the following:
- a current or former spouse or intimate partner of the Complainant;
 - a person with whom the Complainant shares a child in common;
 - a person who is cohabitating with, or has cohabitated with the Complainant as a spouse or intimate partner;
 - a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the State of Maine; or
 - any other person considered a household member under the domestic or family violence laws of the State of Maine.
 - To categorize an incident as Domestic Violence, the relationship between the Complainant and the Respondent must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.
6. **Stalking:** A course of conduct, on the basis of sex, 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.

- For the purposes of this definition, “course of conduct” means a course of conduct, including, but not limited to, acts in which the Respondent directly or indirectly, through third parties, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. These acts can occur by any action, method, device, or means. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- Stalking includes cyberstalking — stalking that occurs through the use of technology or any electronic communication.

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For all sexual harassment definitions, “reasonable person” means a reasonable person under similar circumstances and with similar identities to the Complainant.

[1] This definition is understood to encompass the quid pro quo sexual harassment definition included in the Maine Human Rights Commission employment regulations. Under these regulations, Quid Pro Quo is defined as having occurred when a) submission to unwelcome sexual conduct is made either explicitly or implicitly a term or condition of an individual’s employment; or b) submission to or rejection of unwelcome sexual conduct is used as the basis for employment decisions affecting the individual. Employment Regulations of the Maine Human Rights Commission, Sections 10(1)A and 10(1)B.

[2] The college reserves the right to address unwelcome conduct of a sexual nature that is not severe and pervasive as potential Discriminatory Harassment based on sex or gender. In most instances, employee on employee harassment would be addressed using this Title VII compliant definition.

B. Other Civil Rights Violations

Bates also prohibits the following behavior as forms of discrimination. In addition to the forms of sexual harassment described above, which are covered by Title IX of the Education Amendments of 1972, these behaviors may or may not fall within the scope of Title IX.

a. Discrimination

Discrimination is any action that deprives, limits, or denies other members of the Bates community educational or employment access, benefits, or opportunities based upon an individual’s actual or perceived legally-protected characteristic or activity.

b. Sexual Exploitation

Sexual Exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit anyone other than the person being exploited and that does not otherwise constitute sexual harassment under this policy.

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Examples of sexual exploitation include, but are not limited to:

- Surreptitiously observing another individual's nudity or sexual activity or allowing another individual or group to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Non-consensual taking or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- Distributing sexually intimate or sexual information about another person;
- Prostituting an individual or engaging in sex trafficking;
- Inducing another to expose their own genitals in non-consensual circumstances;
- Knowingly exposing another individual to a sexually transmitted infection (STI) or virus without their knowledge;
- Misappropriating another person's identity on apps, websites, or other venues designed for dating or sexual connections;
- Inducing or attempting to induce incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity;
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or images that depicts a person's nudity or sexual activity;
- Knowingly soliciting a minor for sexual activity;
- Creating, possessing, or disseminating child pornography; and
- Knowingly assisting another person with committing an act of sexual misconduct.

c. Physical Assault and Threats of Violence

Physical Assault is a purposeful action meant to threaten or endanger the health or safety of any person. Examples include, but are not limited to, fighting, pushing, kicking, punching, hitting with or throwing an object at, or biting. Threats of violence may include extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of another person. This behavior is typically treated as a violation of the [Bates Code of Student Conduct](#) and the [Employee Handbook](#) policy. When these acts are perpetrated on the basis of actual or perceived membership in a protected class, the report will be resolved using the procedures outlined in this policy.

d. Hazing

Any action or activity taken, created, or supervised which intentionally either:

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1. recklessly subjects any person to the risk of bodily harm, mental or physical discomfort, embarrassment, harassment, ridicule, or social ostracism; or
2. causes or encourages any person to commit an act that would be a violation of law or college regulations

for the purpose of initiating, promoting, fostering, or confirming any form of affiliation with a student group or organization, regardless of the person's willingness to participate and/or whether the activity has been designated as optional or non-compulsory.

e. Bullying

Bullying is repeated or severe aggressive behavior likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally. It can be written or oral expression, physical acts or gestures, or a combination of the two. It includes, but is not limited to, conduct that:

- physically harms another person;
- damages another person's property;
- creates an intimidating educational or work environment; or
- interferes with the individual's academic or work performance or ability to participate in or benefit from the services, activities, or privileges provided by the college.

Bullying includes cyberbullying — bullying that occurs through the use of technology or any electronic communication.

f. Indecent Exposure

A person commits Indecent Exposure if that person intentionally shows their genitals in a public place or in another place where there are other persons present under circumstances in which one knows or should know that this conduct is likely to affront or alarm.

g. Hate Crime

Hate Crime refers to the violence of intolerance and prejudice, intended to hurt and intimidate, committed against a person, property, or society that is motivated by an offender's bias against a specific characteristic of an individual or group because of their race, ethnicity, national origin, religion, sex, sexual orientation, gender identity, gender expression, age, physical or mental disability. Hate crimes are criminal offenses that include acts such as physical assault, stalking, cyberstalking, criminal threatening, intimidation,

terrorizing, criminal use of explosives, arson, vandalism or other damage to property, reckless conduct, harassment, verbal abuse or insults, or hate mail. Se provide civil and/or criminal remedies for hate crimes. All suspected referred to the State of Maine Office of the Attorney General. Bates disciplinary action under this policy.

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h. Bias Incident

Bias Incident refers to any event of intolerance or prejudice, not involving violence or other criminal conduct intended to hurt and intimidate, committed against a person, property, or society that is motivated by an offender's bias against a specific characteristic of an individual or group because of their race, ethnicity, national origin, religion, sex, sexual orientation, gender identity, gender expression, age, physical or mental disability. Examples of bias incidents include hate speech, gay bashing, racist epithets, religious slurs, sexist jokes or cartoons, hate mail, offensive graffiti, or disparaging remarks on social media sites. Such incidents create a socially divisive atmosphere for members of the Bates community targeted and negatively affect the campus climate. Since "bias incident" is an umbrella term, incidents will be resolved based upon the actual category of prohibited behavior listed above (harassment, bullying, etc.).

C. Retaliation

Retaliation is any adverse action against any individual or group of individuals involved in the filing of a report, investigation, and/or resolution of an allegation of discrimination or harassment. This includes because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or resolution process under the Equal Opportunity, Non-Discrimination, and Anti-Harassment Policy, including an Informal Resolution process, or in any other appropriate steps taken by the college to promptly and effectively end any discrimination or harassment in its education program or activity, prevent its recurrence, and remedy its effects.

Forms of retaliation include intimidation, threats, coercion, or discrimination. Retaliation can be committed by the college, a student, employee, or a person authorized by the college to provide aid, benefit, or service under the college's education program or activity, not just a Respondent. Retaliatory conduct interferes with the rights or privileges secured by law or policy.

An individual reporting harassment or discrimination is entitled to protection from any form of retaliation following a report that is made in good faith, even if the underlying allegations are later not proven to be a violation of this policy. Individuals acting in good faith to oppose or disrupt conduct that constitutes a violation of this policy are likewise protected from retaliation. Individuals accused of discrimination and harassment are warned that any form of retaliation taken against a person submitting a complaint or

participating in an investigation of a complaint will be grounds for disciplinary action, up to and including dismissal from the college.

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Any form of retaliation should be reported to the Associate Vice President for Civil Rights Compliance/Title IX Coordinator (hereafter, Title IX Coordinator) or one of the Deputy Title IX Coordinators immediately. Upon notification, the Title IX Coordinator will investigate this report and take all appropriate and available steps to protect individuals who may be subject to retaliation.

Any attempt to interfere with or circumvent any right or privilege afforded by this policy may be considered retaliatory. Therefore, as directed by the federal regulations, the Title IX Coordinator vets all complaints carefully to ensure that complaints are routed to the appropriate grievance process and that all appropriate rights and privileges are maintained.

The exercise of rights protected under the First Amendment does not constitute retaliation.^[1]

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a resolution proceeding under this policy and procedures does not constitute retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.^[2]

^[1] Per 2020 Title IX Regulations, 34 CFR Part 106.71(b)(1).

^[2] Per 2020 Title IX Regulations, 34 CFR Part 106.71(b)(2).

D. Prohibited Relationships by Persons in Authority

Sexual, romantic, or other intimate relationships in which one party maintains a direct supervisory or evaluative role over the other party are prohibited. In general, this includes all sexual or other intimate relationships between students and their professors, coaches, advisors, employers, supervisors, or other college employees. Similarly, college employees (faculty and staff) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under their direct supervision.

The college does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the college. However, faculty, administrators, and others who educate, supervise, evaluate, employ, counsel, coach, or otherwise guide students or other employees should understand the fundamentally asymmetrical nature of the relationship they have with students or subordinates. Intimate or sexual relationships where there is a differential in power or authority produce risks for every member of our community and undermine the

professionalism of employees and supervisors. In either context, the unequal position of the parties presents an inherent element of risk and may raise sexual harassment concerns if one person in the relationship has the actual or apparent authority to hire, fire, evaluate, counsel, coach or otherwise make decisions or recommendations about the other person in connection with their employment or education at the college.

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Sexual relations between persons occupying asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship.

Therefore, persons with direct supervisory or evaluative responsibilities who contemplate beginning or are involved in such relationships are required to promptly: 1) discontinue any supervising role or relationship over the other person; and 2) report the circumstances to their own supervisor. Examples of evaluative responsibilities include, but are not limited to: grading, performance evaluations, salary decisions, decisions regarding promotion and tenure, or decisions on continuation of employment for a person with whom they have a consensual relationship. Failure to fully or timely comply with these requirements is a violation of this policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the college.

All violations, complaints, or concerns regarding this policy should be reported to the Title IX Coordinator.

E. Other Campus Code Violations

When other potential violations of the [Bates Code of Student Conduct](#) or the [Employee Conduct Policy](#) occur in conjunction with incidents of harassment or discrimination or when the behavior is perpetrated on the basis of bias against a protected class, the college has the discretion to resolve those violations under this policy.

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