

# BATES TECHNICAL COLLEGE DISCRIMINATION & HARASSMENT COMPLAINT PROCEDURE

## A. INTRODUCTION AND WHERE TO REPORT

This procedure accompanies the Bates Technical College Discrimination and Harassment policy.

As it states in Bates Technical College policy, members of the college community or visitors who believe they have been the subject of discrimination or harassment should report the incident or incidents to the College Title IX/EEO Coordinator identified below. If the complaint is against that Coordinator, or if for some other reason a report cannot be made to the Coordinator, the reporting individual should report the matter to one of the alternate designees listed below.

- **Title IX/EEO/ADA Coordinators:**
  - (Employees/Guests/Visitors) Director of Human Resources
  - (Students) Vice President of Institutional Effectiveness & Student Success
- **Alternate Designees:**
  - Vice President of Institutional Effectiveness & Student Success for Employees/Guests/Visitors
  - Director of Human Resources for Students

The Title IX/EEO/504 Coordinators or designees:

- Will accept all complaints and referrals from members of the college community and visitors.
- Will make determinations regarding how to handle requests by responding individual for confidentiality.
- Will keep accurate records of all complaints and referrals for the required time period.
- May conduct investigations or delegate and oversee investigations conducted by a designee.
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment.
- Will issue written findings and recommendations upon completion of an investigation.
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

The College encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or orally. For reporting individuals who wish to submit a written complaint, a formal complaint form is available online at:

<http://www.bates.ctc.edu/Documents/Offices%20and%20Services/HR/HRreportForm.pdf>, for employees, guests, visitors;

<http://www.bates.ctc.edu/Documents/Student%20Services/Discrimharassform.pdf>, for students.

Hardcopies of the complaint form are available at the following locations on campus:

- Human Resources Office, Down Town Campus, Room M326, 253.680.7181;
- Student Services Office, Down Town Campus, Room M211, 253.680.7003.

## B. DEFINITIONS

1. **Business Day:** a weekday, excluding weekends, college holidays, and college closures.
2. **College Community:** Bates Technical College students, employees, trustees, and volunteers.

3. **Complaint:** a description of facts that allege violation of the College's policy against discrimination or harassment.
4. **Consent:** knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or action indicating freely given agreement to have sexual intercourse or sexual contact. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity.

An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual activity.

5. **Discrimination:** unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.
6. **Harassment:** a form of discrimination consisting of conduct that denigrates or shows hostility toward an individual because of their membership in a protected class or their perceived membership in a protected class. Harassment may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the College's educational, social, or housing programs. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include but are not limited to the following:

Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.

Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

7. **Protected Class:** persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.
8. **Reporting Individual(s)/Party:** any member of the college community or visitor who allege that they have been subjected to discrimination or harassment due to their membership in a protected class.

9. **Resolution:** the means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline sanction.
10. **Respondent:** person or persons who are members of the college community who allegedly discriminated against or harassed another person or persons.
11. **Retaliation:** any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies, including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.
12. **Sexual Harassment:** a form of discrimination consisting of unwelcome, sexual or gender-based physical conduct, verbal, written, or electronic communications (including social media). Sexual harassment does not have to be of a sexual nature and can include offensive remarks about a person's gender. There are various types of sexual harassment.
  - a. **Hostile Environment Sexual Harassment** occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the College's educational, social, or housing programs.
  - b. **Quid Pro Quo Sexual Harassment** occurs when an individual in a position of real or perceived authority conditions the receipt of a benefit upon granting of sexual favors.

Examples of conduct that may qualify as quid pro quo sexual harassment include but are not limited to:

- A supervisor or hiring authority who promises an employee a raise or job opportunity (or a potential employee a job) in exchange for submitting to sexual advances.
  - An instructor who promises a student a better grade in exchange for sexual favors.
- c. **Sexual Intimidation** occurs when conduct is threatening or emotionally distressing and based on sex, including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.
  - d. **Sexual Violence:** is also a type of sexual discrimination and harassment. Sexual violence includes, but is not limited to: nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate violence, and stalking.
    - i. **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.
    - ii. **Nonconsensual sexual contact** is any intentional sexual touching, however

slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

- iii. **Domestic violence** includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.
- iv. **Intimate violence** is violence by a person who is or has been in a dating, romantic, or intimate relationship with the victim.
- v. **Stalking** is intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

13. **Visitors:** guests, applicants, contractors, vendors, foundation board members, advisory board members, and members of the public on college premises.

#### **C. WHO MAY FILE A COMPLAINT**

Any member of the college community, guest, or applicant may file a complaint. Complaints may be submitted in writing or verbally. The College encourages the timely reporting of any incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available online at:

<http://www.bates.ctc.edu/Documents/Offices%20and%20Services/HR/HRreportForm.pdf>, for employees, guests, visitors;

<http://www.bates.ctc.edu/Documents/Student%20Services/Discrimharrassform.pdf>, for students.

Hardcopies of the complaint form are available at the following locations on campus:

- Student Services Office, Down Town Campus, Room M211, 253.680.7003;
- Human Resources Office, Down Town Campus, Room M326, 253.680.7181.

Any person submitting a discrimination complaint shall be provided with a copy of the College's Discrimination and Harassment policy and this complaint procedure.

#### **D. CONFIDENTIALITY AND RIGHT TO PRIVACY**

Bates Technical College will seek to protect the privacy of the complainant to the full extent possible, consistent with the legal obligation to investigate, to take appropriate remedial or disciplinary action, and to comply with the federal and state law, as well as Bates Technical College policies and procedures. Although Bates Technical College will attempt to honor reporting individual's requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX/EEO/ADA Coordinator.

**Confidentiality Requests and Sexual Violence Complaints.** The Title IX/EEO/ADA Coordinator will inform and obtain consent from the reporting individual before commencing an investigation into a sexual violence complaint. If a sexual violence reporting individual asks that his or her name not be revealed to the respondent or that the College not investigate the allegation, the Title IX/EEO/ADA Coordinator will inform the reporting individual that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent or others is prohibited. If the reporting individual still insists that his or her name not be disclosed or that the College not investigate, the Title IX /EEO Coordinator will determine whether the College can honor the request and at the same time maintain a safe and

non-discriminatory environment for all members of the college community, including the reporting individual. Factors to be weighed during this determination may include, but are not limited to:

- the seriousness of the alleged sexual violence;
- the age of the reporting individual;
- whether the sexual violence was perpetrated with a weapon;
- whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;
- whether the respondent threatened to commit additional acts of sexual violence against the reporting individual or others; and
- whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the College is unable to honor a reporting individual's request for confidentiality, the Title IX/EEO/ADA Coordinator will notify the reporting individual of the decision and ensure that reporting individual's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the College decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX/EEO/ADA Coordinator will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

## **E. INVESTIGATION PROCEDURE**

Upon receiving a discrimination or harassment complaint, the College shall commence an impartial investigation. Investigations shall be conducted in compliance with applicable Bates Technical College policies and collective bargaining agreements. The Title IX/EEO/ADA Coordinator shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EEO/ADA Coordinator or their designee. If the investigation is assigned to someone other than the Title IX /EEO Coordinator, the Title IX/EEO/ADA Coordinator shall inform the complainant(s) and respondent(s) of the appointment of an investigator.

**Interim Measures.** The Title IX/EEO/ADA Coordinator may impose interim measures to protect the reporting party or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to: imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the College's student conduct code or the College's employment policies and collective bargaining agreements.

**Investigation.** Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the reporting individual and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty (60) days barring extenuating circumstances. At the conclusion of the investigation the investigator shall set forth his or her findings in writing. The investigator shall send a copy of the findings to the Title IX/EEO/ADA Coordinator. The Title IX/EEO/ADA Coordinator shall consider the findings and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred, and if so, what steps will be taken to resolve the complaint, remedy the effects on any victim(s), and prevent its recurrence. Possible remedial steps may include, but are not limited to: referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student conduct code or college employment policies and collective bargaining agreements.

**Written Notice of Decision.** The Title IX/EEO/ADA Coordinator will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended to resolve the complaint, subject to the following limitations. The reporting individual shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions or recommendations directly relate to the reporting party, such as a finding that the complaint does or does not have merit or a recommendation that the respondent not contact the reporting individual. The reporting individual may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the reporting individual and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA or HIPAA confidentiality requirements.

**Informal Dispute Resolution.** Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the reporting individual and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

**Final Decision/Reconsideration.** Either the reporting individual or the respondent may seek reconsideration of the decision by the Title IX/EEO/ADA Coordinator. Requests for reconsideration shall be submitted in writing to the Title IX/EEO/ADA Coordinator within seven (7) days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven (7) days, the decision becomes final. If a request for reconsideration is received, the Title IX/EEO/ADA Coordinator shall respond within thirty (30) days. The Title IX/EEO/ADA Coordinator shall either deny the request or, if the Title IX/EEO/ADA Coordinator determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

**F. PUBLICATION OF ANTI-DISCRIMINATION POLICIES AND PROCEDURES**

The policies and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the District Chancellor, College President(s), or designee. Any person who believes they have been subjected to discrimination or harassment in violation of College policy will be provided a copy of these policies and procedures.

**G. LIMITS TO AUTHORITY**

Nothing in this procedure shall prevent the Bates Technical College District Chancellor, College President(s), or designee from taking immediate disciplinary action in accordance with Bates Technical College policies and procedures, and federal, state, and municipal rules and regulations.

**H. NON-RETALIATION, INTIMIDATION AND COERCION**

Retaliation by, for or against any participant (including reporting individual, respondent, witness, Title IX/EEO/ADA Coordinator, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX/EEO/ADA Coordinator immediately.

**I. CRIMINAL COMPLAINTS**

Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

- Tacoma Police Department  
3701 South Pine Street  
Tacoma, Washington  
Emergency: 9-1-1  
Police Non-Emergency: 253.798.4721
  
- Pierce County Sheriff's Headquarters  
930 Tacoma Avenue, S  
Tacoma, Washington  
253.798.7530
  
- Washington State Police  
2502 112<sup>th</sup> Street East  
Tacoma, Washington  
253.538.3240

The College will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil or criminal prosecution.

**J. OTHER DISCRIMINATION COMPLAINT OPTIONS**

Discrimination complaints may also be filed with the following federal and state agencies:

- [Washington State Human Rights Commission](http://www.hum.wa.gov/index.html), <http://www.hum.wa.gov/index.html>
- [US Dept of Education Office for Civil Rights](http://www2.ed.gov/about/offices/list/ocr/index.html),  
<http://www2.ed.gov/about/offices/list/ocr/index.html>
- [Equal Employment Opportunity Commission](http://www.eeoc.gov/), <http://www.eeoc.gov/>