

# BENNINGTON COLLEGE

Policy and Procedures  
Governing Sexual Harassment  
2012-2013

# Policy and Procedures Governing Sexual Harassment

Sexual harassment subverts the educational mission of Bennington College and threatens the well-being of students, faculty, and staff. It is a form of sex discrimination, which is illegal under state and federal law. It is also illegal to retaliate against a person for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment. Conduct, whether intentional or unintentional, that results in the sexual harassment of a member of the College community is prohibited and will not be tolerated. This policy applies to the entire College and to the conduct of students, faculty, administration, and staff alike.

Sexual harassment may be described as sexual assault, coerced sexual intercourse, unwelcome sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature where:

1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or education; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting the individual; or
3. 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 work or educational environment.

Sexual harassment may occur in a setting in which the power inherent in a faculty member's or supervisor's relationship to his or her students or subordinates is exploited. While sexual harassment most often takes place between persons of unequal power and/or status, it can also occur between equals, i.e., student–student, faculty–faculty, or staff–staff. Both men and women, homosexual as well as heterosexual, can be sexually harassed.

In determining whether alleged conduct constitutes sexual harassment, those entrusted with carrying out this policy will look at the record as a whole and at the totality of the circumstances, such as the nature of and the context in which the alleged incidents occurred.

Examples of sexual harassment include, but are not limited to, the following, when such behavior or acts come within one of the definitions above:

1. Sexual assault and/or coerced sexual intercourse.
2. Either explicitly or implicitly conditioning any term of employment (e.g., continued employment, wages, evaluation, advancement, and assigned duties or shifts) or educational benefit on the provision of sexual favors.
3. Touching or grabbing a sexual part of a person's body.
4. Touching or grabbing any part of a person's body after that person has indicated or it is known or should be known that such physical contact was unwelcome.
5. Continuing to ask a person to socialize when that person has indicated he or she is not interested.
6. Displaying or transmitting sexually suggestive pictures, objects, cartoons, or posters if it is known or should be known that the behavior is unwelcome.
7. Continuing to write sexually suggestive notes or letters if it is known or should be known that the person does not welcome such behavior.

8. Referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such behavior.
9. Regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior.
10. Retaliation of any kind for having filed or supported a complaint of sexual harassment (e.g., ostracizing the person, pressuring the person to drop or not support the complaint, adversely altering that person's duties or work or educational environment, etc.).
11. Derogatory or provoking remarks about or relating to a person's sex.
12. Harassing acts or behavior directed against a person on the basis of his or her sex.

**Consensual relationships.** Consenting romantic and sexual relationships between faculty and student or between supervisor and subordinate employee are deemed by the College to be very unwise. Relationships between faculty and students, and between supervisors and subordinate employees, are fundamentally asymmetric in nature. Codes of ethics for most professional associations forbid professional–client sexual relationships. The faculty–student relationship resembles one of professional and client. Implicit in the idea of professionalism is the recognition by those in positions of authority that in their relationships with students there is always an element of power. This is also true of supervisor–subordinate employee relationships. Faculty/supervisors exercise power over students/ subordinate employees, whether in giving them praise or criticism, evaluating them through comments, making recommendations for their further studies or their future employment, or conferring any other benefits. Trust and respect are diminished when those in positions of authority abuse this power. Those who abuse their power in such a context violate their duty to the College community.

Faculty members should be aware that any sexual relationship with students, and supervisors should be aware that any sexual relationship with subordinate employees, makes them liable for formal disciplinary action should a charge of sexual harassment be lodged against them. A sexual relationship between a faculty member and a student occurring during a period of instructional or advising responsibilities carries a presumption of coercion should a charge of sexual harassment be lodged. Even when faculty member and student, or supervisor and subordinate employee, have mutually consented at the outset to the development of such a relationship, it is the faculty member or supervisor who, by virtue of his or her special responsibility, will be held accountable.

Even in a personal relationship between faculty member and student for whom the faculty member has no current professional responsibility, the faculty member should be sensitive to the constant possibility that he or she may be placed in a position of responsibility for the student's instruction or evaluation. Similarly, in a personal relationship between supervisor and subordinate employee for whom the supervisor has no current professional responsibility, the supervisor should be sensitive to the constant possibility that he or she may be placed in a position of responsibility for the subordinate employee.

**Note:** There are special rules for certain Campus Safety positions regarding consensual relationships. If your position is in Campus Safety, please see your supervisor for the rules applicable to your position.

1. **General information.** Use of the College procedures described below does not foreclose either civil or criminal legal action by the complainant, and a complainant who wishes to consider pursuing such action should seek legal advice. A complainant may simultaneously pursue a criminal complaint and a complaint under these procedures.

No retaliatory actions may be taken against any person because he or she makes such a complaint or against any member of the Bennington community who serves as an advisor or advocate for any party in any such complaint.

The College may take interim emergency measures as provided below pending the resolution of a complaint.

A complainant may also file a complaint by writing or calling the following state or federal agencies, as applicable:

- Vermont Attorney General's Office, Civil Rights Unit, 109 State Street, Montpelier, VT 05602, phone: 802-828-3171 (voice/TDD).
- Equal Employment Opportunity Commission, 1 Congress Street, Boston, MA 02114, phone: 617-565-3200 (voice), 617-565-3204 (TDD).
- Vermont Human Rights Commission, 133 State Street, Montpelier, VT 05633-6301, phone: 802-828-2480 (voice/TDD).

These agencies can conduct impartial investigations, facilitate conciliation, and if it is found that there is probable cause or reasonable grounds to believe sexual harassment occurred, they may take the case to court.

2. **College Procedures.** Members of the Bennington College community (defined as all currently enrolled students and all currently employed faculty and staff) who believe that they have been subjected to sexual harassment have three options:
  - Option #1—Sexual harassment advisors. They may seek advice from a sexual harassment advisor.
  - Option #2—Mediation. They may attempt to resolve their complaint through mediation by a College administrator.
  - Option #3—Formal complaint. They may file a formal complaint.

Each of these options is described in detail on the following pages.

**Note:** A complainant may use all three options or may proceed immediately to option #2 or #3 without first using the previous option(s).

3. **Confidentiality.** There is no such thing as an “unofficial” complaint of sexual harassment. Anyone seeking to discuss incidents or situations in private should speak with a sexual harassment advisor or the College's Psychological Services Office. Once any other College official learns of a sexual harassment complaint, written or unwritten, the College may be required by law to investigate it and to take action consistent with the law and with the College's policies and procedures. Within the requirements of such laws and policy, confidentiality will be observed as much as possible.

## Option #1—Sexual Harassment Advisors

- A. The sexual harassment advisors will normally be composed of two students, two faculty members, and two staff members. The advisors will be appointed by the president. Advisors will serve staggered terms of one year, although an advisor may be reappointed. The names of advisors will be published in College announcements, as will the times during the term when they will be available.
- B. Any member of the Bennington College community who believes that he/she has been sexually harassed while a member of the Bennington College community by another member of that community may seek the assistance of one of the College's sexual harassment advisors in any or all of the following respects:
  1. The advisor will listen to and discuss the case with the advisee. **Note:** If the advisor determines that there is a threat to the advisee or to others, he or she must report the incident to a College official.
  2. The advisor will outline for the advisee the possible courses of action open to him or her in those cases under this policy.
  3. The advisor may assist the advisee with gathering the necessary documentation to bring a formal complaint or to pursue a complaint through mediation and may accompany the advisee through the College's mediation and/or formal complaint procedures if the advisee has decided to follow such procedures and wants his or her advisor present.

**Note:** Anyone may bypass the sexual harassment advisors and/or the mediation procedure and may directly file a formal complaint.

## Option #2—Mediation

- A. Any member of the Bennington College community who believes that he or she has been sexually harassed while a member of the Bennington College community by any other member or members of the Bennington College community may pursue a complaint through a mediation procedure. Such a complaint must be filed during the time that the accused person is a member of the Bennington College community and must be filed not more than 12 months after an alleged incident. Recognizing that prolonged delay may complicate the comprehensive presentation of evidence, prompt reporting of the incident is strongly encouraged. Mediation will not be used to resolve complaints of sexual assault.
- B. A written complaint must be filed with the dean of the College or the chair of the Sexual Harassment Hearing Committee or designee, or if the case involves student-to-student harassment, with the associate dean of the College. For cases involving complaints against a member of the senior staff of the College and for cases involving complaints against any member of the Sexual Harassment Hearing Committee (SHHC), the complainant must file the mediation request with the president of the College. For a case involving a complaint against the president, the complainant must file the mediation request with the dean of the College, who will transmit the request to the Board of Trustees. The board will proceed from that point in a manner it shall solely determine.
- C. The dean of the College, the chair of the Sexual Harassment Hearing Committee, or the associate dean of the College may take such interim emergency measures as he or she sees fit pending the outcome of a complaint pursued through mediation.

- D. Once a written complaint is filed with one of these College officials, he or she shall appoint an investigator to determine whether or not there are grounds for continuing with the mediation procedure. If the administrator determines that there are not such grounds, the administrator shall notify the complainant in writing. If the complainant wishes to pursue the complaint, he or she may file a formal complaint. If the administrator decides that there are such grounds, then the complainant and the administrator may agree to adopt one of the following courses of action, to be completed within 10 working days of that agreement:
1. The administrator will attempt an informal resolution of the complaint directly and privately with the person complained against.
  2. The administrator and the complainant will seek an informal resolution of the complaint by meeting together with the person complained against.
  3. The administrator will appoint someone from the College community who will seek to resolve the complaint informally. This person will meet with both parties, either separately or together.
  4. The administrator will transmit the complaint to the SHHC as a formal complaint (see below).
- E. Each party may be accompanied by an advisor or advocate of his or her choice, which must be a current member of the Bennington College community in any stage of this mediation procedure. Such persons may, but need not be, chosen from among the sexual harassment advisors.
- F. An official, written record will be kept consisting of the complaint, a list of all meetings and interviews that comprised the procedure (identifying the time and place of the meeting and all the participants in them), a statement by the administrator indicating which of the four procedures listed in Paragraph D under Option #2 above was used in the resolution of the complaint, and a copy of the mediation resolution statement, if any. One copy of this written record will be kept in the confidential sexual harassment file kept by the chair of the Sexual Harassment Hearing Committee.
1. In cases where the person charged is a member of the staff, an additional copy of the record will be kept in that person's personnel file in the Human Resources Office.
  2. In cases where the person charged is a faculty member, an additional copy of the record will be kept in the person's personnel file in the Office of the Dean of the College, which is available for formal faculty personnel reviews and the president.
  3. In cases where the person charged is a student, an additional copy of the record will be kept in a file in the Office of the Dean of the College.
- G. A complaint pursued through mediation will be considered to have been resolved when both parties have signed a statement indicating their acceptance of the outcome of the mediation procedure, and the College administrator who has directed the procedure has also approved and signed the statement. A complaint that has been resolved through mediation may not be filed as a formal complaint.
- H. If the complaint cannot be resolved through mediation, or if the administrator determines that the case is not appropriate for mediation, the administrator will refer the case to the SHHC under the formal complaint procedure stated below.
- ### Option #3—Formal Complaint
- A. Any current member of the Bennington College community who believes that he or she has been sexually harassed while a member of the Bennington College community by any other member of the Bennington College community may make a formal complaint against the alleged harasser. A formal complaint may also be filed by the dean of the College, the associate dean of the College, or the senior vice president for administration and planning, if it has come to such person's attention that a member of the Bennington College community may have been sexually harassed while a member of the College community by any other member of the College community. In either event, the complaint must be filed during the time that the accused person is a member of the Bennington College community and must be filed not more than 12 months after an alleged incident. Recognizing that prolonged delay may complicate the comprehensive presentation of evidence in the grievance procedures, prompt reporting of an incident is strongly encouraged. Upon filing the complaint, the complainant will be provided with a copy of this policy.
- B. The Sexual Harassment Hearing Committee (SHHC) shall consist of five members appointed by the president. The non-student committee members shall be appointed initially for staggered terms of service varying in length from one to three years, and thereafter for three years. Student members of the committee may be appointed for one, two, or three years. The committee shall be chaired by an administrator appointed by the president. The chair will vote solely in the case of a tie. The remaining membership of the committee shall consist of two faculty members, one staff member, and one student. Three alternates (one faculty member, one staff member, and one student) shall also be appointed by the president and will serve when any member cannot serve on a particular case. In instances when a case must be heard outside of the academic term, the president may appoint an interim committee.
- C. All formal complaints, except those against a member of the SHHC or the president, must be filed in writing with the director of Human Resources, who normally serves as the chair of the SHHC. Formal complaints against any member of the SHHC shall be filed in writing with the president, who will appoint a replacement on the committee, which will then proceed according to the procedure outlined below. A formal complaint against the president shall be filed with the dean of the College, who will transmit the complaint to the Board of Trustees. The board will proceed from that point in a manner it shall solely determine.
- D. The committee has the authority to investigate and conduct hearings for formal complaints of sexual harassment brought directly to the committee by the complainant as an initial complaint, for complaints referred to it pursuant to the mediation complaint procedure (see Option #2 on previous page), or by the dean of the College, the associate dean of the College, or the senior vice president for administration and planning.

- E. The chair of the SHHC may take such interim emergency measures as he or she sees fit, pending the outcome of a case, including such measures as are necessary to protect the complainant.
- F. The Committee may formulate its own procedures insofar as they are not specified in this Policy and may rely on College resources in the course of an investigation.
- G. **Investigation and decision to hear case.** The chair of the SHHC will appoint an investigator who will investigate the charges, make a written report to the committee with a recommendation that the committee hear or not hear the case. The investigator will bring the charges on behalf of the College at the hearing. The investigator will give the written complaint to the person charged. The person charged may submit a written response, which will be given to the complainant before the hearing. The SHHC shall determine, by majority vote, whether to schedule the case for hearing or to issue a notice of dismissal. A complainant may appeal the committee's decision to dismiss a case, in writing within 10 working days of the committee's decision, to the president. The decision of the president is final.
- H. **Notice of hearing.** The chair of the SHHC will send written notification of the charges, a copy of the complainant's written statements, if any, and the date and time of the hearing to the person charged. The person charged is required to return the Acknowledgment of Receipt form. The chair of the SHHC will send a copy of the written notification of the charges, a copy of the written response, if any, of the person charged, and the date and time of the hearing, to the complainant. The person charged and the complainant may bring witnesses and one advisor or representative from within the College community to the hearing and is required to name them on the Acknowledgment of Receipt form. Such advisors or representatives in no case shall be legal counsel and will serve as support but will not participate directly in the hearing.
- I. **Hearing procedure.** Hearings shall not be open to the public. The chair of the committee presides. If the person against whom a complaint has been made, after proper notification, fails to appear, without prior written authorization of the chair, he or she waives the right to appear and the case will proceed as scheduled. The person charged, the complainant, and the College are offered the opportunity to present their own witnesses and to question one another's witnesses. The chair, in his or her sole discretion, may require that the questions of the person charged to the complainant and/or the questions of the complainant to the person charged be submitted in writing in advance of the hearing and asked by the chair rather than by the person charged or the complainant. Upon written request of the complainant, the chair may make arrangements for the hearing to proceed without the complainant and the person complained against being present at the same time. All factual issues shall be decided by a preponderance of the evidence. At the close of the hearing, all parties shall be excluded during the deliberations of the committee. A written history of prior findings of sexual harassment against the person charged will be presented to the committee by the chair if sexual harassment is found, but before deciding sanctions. A copy will be given to the person charged.
- J. **Committee recommendation.** If the committee finds that a violation of this Policy has occurred, a written notification of

the committee's recommendation is sent to the dean of the College in the case of faculty members, to the associate dean of the College in the case of students, or the senior vice president for administration and planning in the case of non-faculty employees. This recommendation includes sanctions (if any).

If the committee does not find that a violation of this Policy has occurred, it shall so inform the person charged and the complainant. The complainant may appeal the decision within 10 working days to the president on the grounds, and pursuant to the procedures, set forth in Section K. below.

If the committee has found a violation of this Policy, it may take one of the following actions:

1. In those cases in which the committee recommends that disciplinary action against a non-faculty employee should be imposed, it may recommend sanctions ranging from a written reprimand to discharge from employment at the College. This recommendation will be made to the senior vice president for administration and planning who will decide the case and may implement, modify, increase, or suspend the sanctions recommended by the committee. The senior vice president for administration and planning will send a decision letter and the committee's recommendation letter to the employee, the members of the SHHC, and the complainant. When the copies of the decision letters are sent to the complainant, the chair may determine in his or her sole discretion that material contained in the letters be redacted. The employee may appeal the senior vice president's decision within 10 working days to the president.
2. In those cases in which the committee recommends that disciplinary action against a student should be imposed, it may recommend sanctions ranging from a written reprimand to expulsion from the College. This recommendation will be made to the dean of the College who will decide the case and may implement, modify, increase, or suspend the sanctions recommended by the committee. The dean of the College will send a decision letter and the committee's recommendation letter to the student, the members of the SHHC, and the complainant. When the copies of such letters are sent to the complainant, the chair may determine in his or her sole discretion that material contained in the letters be redacted. The student may appeal the decision of the dean within 10 working days to the president. In cases of suspension or expulsion, a copy of the SHHC letter will be placed in the student's academic file.
3. In those cases in which the committee recommends that formal disciplinary action against a faculty member should be imposed, it may recommend sanctions ranging from a written reprimand to discharge from employment at the College. This recommendation is forwarded to the dean of the College who will then recommend to the president the implementation, modification, increase, or suspension of the sanctions recommended by the committee. The president will decide the case and may implement, modify, increase, or suspend the sanctions recommended by the dean of the College. The president will send a decision letter along with the committee's recommendation letter and the dean's recommendation letter to the faculty member. A copy of these letters will also be sent to the dean, the members of the SHHC, and the complainant. When the copies

of such letters are sent to the complainant, the chair may determine in his or her sole discretion that material contained in such letters be redacted. The faculty member may appeal the decision of the president within 10 working days to the chair of the Board of Trustees.

#### K. Appeals

1. Either the complainant or the person charged may appeal the decision and/or the sanctions. In the case of an appeal by a complainant, the time for taking an appeal and the person with whom the appeal must be filed shall be the same as those which would apply to an appeal by the person charged in the individual case (for example, if the person charged is a student, then the complainant may appeal the decision of the dean within 10 working days to the president).
  2. Appeals may be based only upon the following:
    - a. Newly discovered evidence that could not have been discovered at the time of the hearing and would have had a significant effect on the outcome;
    - b. A violation of the procedures under this Policy that had a significant effect on the outcome; or
    - c. An appeal of the sanction(s) imposed.
  3. The president shall determine, in his or her sole discretion, the format of an appeal under subparagraphs J.1. and J.2. above, and the format of an appeal of a complainant from a determination that there has been no violation of the Policy. The president may implement, modify, increase, or suspend the sanctions recommended or imposed and will send his or her appeal decision letter to the appellant. A copy of this appeal decision letter will also be sent to the complainant and the members of the SHHC. The decision of the president is final in all cases.
  4. In the case of faculty appeals under subparagraph J.3. above, the chair of the Board of Trustees or the chair's designee shall determine, in his or her sole discretion, the format of appeals and may implement, modify, increase, or suspend the sanctions recommended or imposed and will send his or her appeal decision letter to the appellant. A copy of this appeal decision letter will also be sent to the complainant and the members of the SHHC. The decision of the chair or the chair's designee is final in all cases.
- L. Materials and records of the SHHC shall be kept by the chair of the Sexual Harassment Hearing Committee.
- M. In all cases involving disciplinary action, the following will occur:
1. In cases where the person charged is a non-faculty employee, a copy of the decision letter and the appeal decision letter, if any, will be kept in that person's personnel file in the Human Resources Office.
  2. In cases where the person charged is a faculty member, a copy of the decision letter and the appeal decision letter, if any, will be kept in his or her file in the dean of the College's office, which is available for formal faculty personnel reviews and the president.
  3. In cases where the person charged is a student, a copy of the decision letter and appeal decision letter, if any, will be kept by the chair of the Sexual Harassment Hearing Committee and in a file in the Office of the Dean of the College.
- N. Every effort will be made to investigate and resolve complaints of sexual harassment within a reasonable period of time, which shall not exceed sixty (60) calendar days except in extraordinary circumstances, in which event the chair shall notify the complainant and the person charged of the reason and expected duration of the delay.