A Guide to Bowdoin’s Student Sexual Misconduct Policy

This Guide is intended to help students better understand and navigate Bowdoin College’s Student Sexual Misconduct Policy.

Reporting and Resolution Options

Anonymous Report Form:
- Paper form, filled out by the Complainant, which provides the details of the misconduct and is completely anonymous.

Anonymous Report Form that Identifies the Respondent:
- Paper form, filled out by the Complainant, which provides the details of the misconduct and identifies the Respondent, but does not reveal the name of the Complainant.
- Outcomes: Report filed with Security for disclosure of statistical crime information in the Clery Report and Respondent meets with his/her Dean and the Advisor to the Student Sexual Misconduct Board to talk about expectations around consent, review the Policy and discuss the process if a charge is brought forward.

No-Contact Order:
- An order, put in place by the Advisor to the Student Sexual Misconduct Board, that includes a directive that the Respondent refrain from having contact with the Complainant, directly or through proxies, whether in person or via electronic means.
- Potential Outcome: The violation of a no-contact order will constitute related offenses that may lead to additional disciplinary action.

Interim Measures:
- Protective action that can be put in place, by either the Advisor or the Dean of Student Affairs.
- All interim measures seek to minimize unnecessary or unreasonable burdens on either party while also ensuring that every reasonable effort be made to allow the Complainant to continue in her or his academic, College housing and/or College employment arrangements.
- Potential Outcomes: The alteration of students’ academic, College housing and/or College employment arrangements.
Informal Resolution:

- Informal Resolution is a resolution process that is not a hearing and is not mediation.
- In an Informal Resolution, the Complainant has the opportunity to confront the Respondent and to communicate his or her feelings and perceptions regarding the alleged Sexual Misconduct, the impact of the incident, and his or her wishes and expectations regarding protection in the future. The Respondent will have an opportunity to respond.
- The Chair of the Student Sexual Misconduct Board, or a designee of the Chair, will preside over the Informal Resolution and may elect to be assisted by another member of the Board or staff of the Dean’s Office.
- Potential Outcomes: Protective actions imposed by the Board Chair may include accommodations to living, academic or employment situations; limitations of contact between the parties’; and required counseling for the Respondent.

Formal Resolution:

- An investigation of the incident by an impartial investigator will be conducted and a hearing may be provided before the Student Sexual Misconduct Board Hearing Panel.
- The Student Sexual Misconduct Board Hearing Panel is comprised of one student and two faculty/staff members, one of whom is the Dean of Student Affairs or his/her designee, who will serve as the presiding chair. All members are selected from the Judicial Board and receive additional training to serve on this Board.
- Potential Outcomes: The panel will find the Respondent either responsible or not responsible. If they find the Respondent responsible, the panel may impose any sanction that it finds to be fair and proportionate to the violation and that is authorized for violations of the Sexual Misconduct Policy, including but not limited to, social probation, suspension, and indefinite or permanent dismissal.

Filling a Criminal Complaint:

- A criminal complaint is filed through the local police department.
- You may either call the police department to arrange a time to meet with them or go to the police department in person to file the criminal complaint.
- You can arrange for a SASSMM (Sexual Assault Support Services of Midcoast Maine) staff member to accompany you to the police station.
- Potential Outcomes: The Respondent could be criminally prosecuted by the District Attorney’s Office.
Important Policy Definitions

"Effective Consent" means words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Effective Consent cannot be gained by force, by ignoring or acting in spite of the objections of another, or by taking advantage of the Incapacitation of another, where the Respondent knows or reasonably should have known of such Incapacitation. The use of alcohol or other drugs will never function to excuse behavior that violates this Policy. Effective Consent is also absent when the activity in question exceeds the scope of Effective Consent previously given. In addition, certain states have designated a minimum age under which a person cannot give Effective Consent.

“Sexual Misconduct” is a broad term encompassing “Sexual Exploitation,” “Sexual Harassment,” “Non-Consensual Sexual Contact,” and “Non-Consensual Sexual Intercourse,” as defined in this Policy. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate sexual relationship. Sexual Misconduct can be committed by men or women, and it can occur between people of the same or different sex.

“Non-Consensual Sexual Contact” means Sexual Contact that occurs without Effective Consent.

“Non-Consensual Sexual Intercourse” means Sexual Intercourse that occurs without Effective Consent.

“Sexual Contact” means the deliberate touching of a person’s intimate parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas), or using force to cause a person to touch his or her own or another person’s intimate parts.

“Sexual Exploitation” means taking sexual advantage of another person without Effective Consent, and includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts (including genitalia, groin, breasts or buttocks) of another person; allowing third parties to observe private sexual acts; engaging in voyeurism; and/or knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection.

“Sexual Harassment” means unwelcome conduct, based on sex or gender stereotypes, which is sufficiently serious that it unreasonably or substantially interferes with a student’s College employment, academic performance or participation in College programs or activities or creates a living, learning or working environment that a reasonable person would find intimidating, hostile or offensive. Sexual Harassment, if
severe, pervasive, or objectively offensive, may include, for example, unwelcome physical contact, sexually explicit comments in person or via phone, letter, note, gift, text message, email or other electronic medium, sexual advances, requests for sexual favors, unwelcome invitations to engage in sexual activity, unwelcome commentary about an individual’s body or sexual activities, threatening to engage in an unwelcome sexual act with another person, engaging in indecent exposure, and stalking or cyber-stalking. Title IX and this Policy prohibit gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. In evaluating any complaint of Sexual Harassment, the perceived offensiveness of a particular expression, standing alone, is not sufficient by itself to constitute Sexual Harassment. The conduct in question must be objectively intimidating, hostile or offensive and interfere with a person’s right to equally participate in programs and activities of the College.

“Sexual Intercourse” means penetration (anal, oral or vaginal) by a penis, tongue, finger or an inanimate object.

Discussion of Other Important Terms Used in Policy

The following discussion and the case studies are intended to help students understand how the Policy will be interpreted and applied. The case studies are provided for information purposes only. It is important to remember that the Student Sexual Misconduct Board will make findings based upon the unique facts and circumstances of each case.

“Force” under the Policy means physical force, violence, threat, intimidation or coercion.

“Physical Force and Violence” under the Policy means intentional physical impact upon the Complainant or physical restraint and could include the presence of a weapon.

“Threat” under the Policy means a threat of death or grave bodily injury or a threat of a negative consequence to cause the Complainant to acquiesce in sexual activity. Examples include but are not limited to: “If you do not have sex with me, I will hurt you or someone else close to you,” or “If you do not have sex with me, I will tell people you raped me.”

“Intimidation” under the Policy describes a situation where a Respondent acts in such a way to influence a Complainant to acquiesce in sexual activity by use of power or authority or where the Respondent’s actions would cause a reasonable person in the position of the Complainant to be fearful. “Intimidation” can include physical force,
violence, and threat. Under the Policy, there must be some overt act that causes a Complainant’s feelings of intimidation.

“Coercion” means an unreasonable amount of pressure to engage in sexual activity including pressure, duress, cajoling, and compulsion. Coercion does not mean sexual advances. Coercion occurs when a Respondent makes a sexual advance and the Complainant makes clear, through words or actions, that he/she does not want to engage in sexual activity but the Respondent keeps pushing to make the Complainant acquiesce. Some amount of pressure can be reasonable and socially acceptable. Too much pressure crosses the line. The line begins when the Complainant makes it clear that the pressure is unwelcome. Behavior is more likely to be coercive if it takes place in isolation (someone’s room as opposed to a crowded party where friends are present), over a long duration, with a high level of frequency, and with an intensity regarding what is being said and how it is being said.

Issues around “consent”: The initiator of sexual activity has an obligation to obtain the consent of another through words or actions. Consent to one form of sexual activity does not constitute consent to any other sexual activity. Consent does not last indefinitely. A prior sexual encounter between two parties does not constitute consent. Silence, in and of itself, does not constitute consent without actions demonstrating a desire to engage in sexual activity.

Once sexual activity is initiated and consent is provided, a withdrawal of such consent must be clearly communicated. There is no violation of the policy if a student consents to sexual activity and then no longer wishes to engage in such sexual activity but remains silent and fails to clearly communicate a withdrawal of consent.

“Incapacitation” under the Policy means the lack of ability to make rational, reasonable judgments as a result of alcohol (or other drug) consumption. Incapacitation is a state beyond drunkenness or intoxication. Incapacitation can be defined with respect to how the alcohol consumed impacts one’s decision-making capacity, awareness of consequences, and ability to make fully informed judgments. In order to consent effectively to sexual activity one must understand who, what, when, where and how with respect to that sexual activity. An incapacitated person cannot give effective consent.

“Taking advantage of another person’s incapacitation” means that the Respondent either knows or reasonably should know that the Complainant is incapacitated.

“Causing or intending to cause the incapacitation of another in order to take sexual advantage of such other person” constitutes Sexual Exploitation in violation of the Policy. For example, a Respondent violates the Policy if he/she puts a date rape drug in another’s drink or provides and pushes drinking on a Complainant in order to engage in sexual acts with the Complainant. Under the Policy, being under the influence of drugs
or alcohol is not an excuse to a charge of sexual misconduct. Similarly, a Complainant is responsible for his/her own consumption of alcohol or drugs. Just because a Respondent obtains beers from a keg or mixes drinks for a Complainant does not mean the Policy has been violated if they then engage in sexual activity.

Issues around “sexual harassment”: When a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the school’s programs. In most, cases a hostile environment will exist if there is a pattern or practice of harassment, or if the harassment is sustained and nontrivial. For example, if a student is taunted about his/her genitals, a hostile environment has likely been created particularly if the taunting has gone on for some time, has gone on throughout the school, or if the taunts have been made by a number of students. The more severe the conduct, the less the need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Sexual harassment may be committed by an individual or a group.

Case Studies

1: Jada is at a party and, although she has been drinking a lot, none of her friends feels concerned about her level of intoxication. Paul gets to the party late and sees Jada. They dance and talk and eventually start making out on the dance floor. Her friends all see this but no one stops her because she seems capable of making her own decisions. Paul asks Jada to go back to his room and they leave the party. Back in his room, Paul, who is not very intoxicated, and Jada start making out. Things progress and Paul asks Jada if he should get a condom. She agrees and they have sex. The next morning Jada wakes up and is horrified to be in Paul’s room and even more horrified to learn they had sex. She remembers dancing with Paul at the party and flirting with him, but doesn’t remember leaving the party with him.

This does not constitute a violation of Bowdoin’s Student Sexual Misconduct Policy. Paul had no way of knowing how intoxicated Jada was, as he had not seen her drink nor had her behavior shown her level of intoxication. He neither caused her incapacitation, nor took advantage of her incapacitation. He asked for consent and she gave it, thereby meeting his responsibility to obtain her effective consent under the Policy.

2: Brianna and Javier have been dating for over a year. Brianna is at a party and is clearly very drunk. She is falling down and slurring her words. When Javier gets to the party, Brianna comes running up to him and throws her arms around him. They start dancing, but Brianna can barely stand up. Javier gets her a drink and then asks her if she wants to get out of there. He’s only had a few beers and so he helps her back to his place. When they get there, she climbs into bed and starts to pass out. He starts to kiss
her. She kisses him back, but is clearly very out of it. They make out for a while and he asks her if she has a condom. She gets a condom and they have sex.

*This does constitute a violation of Bowdoin’s Student Sexual Misconduct Policy. Although Brianna provided consent to sex through her words and actions, her consent was not effective because Javier took advantage of her incapacitation.*

3: Isabella and Tomas have been dating for a few months. They are out at a party and they go back to Isabella’s room. They have had sex before but on this night Isabella is not feeling in the mood. She doesn’t want to explicitly tell Tomas this, as she doesn’t want to ruin what’s happening between them, so she tries to send him clues. She subtly moves away when he tries to take her shirt off, suggests watching a movie, tells him how tired she is, etc. He clearly wants to have sex and isn’t taking any of the hints. Eventually she stops putting up walls and they start making out. They don’t talk about what is happening or going to happen but both seem into it. She takes his pants off and puts the condom that he hands her on him.

*This does not constitute a violation of Bowdoin’s Student Sexual Misconduct Policy. By taking off Tomas’s pants and putting on the condom that he handed to her, Isabella demonstrated effective consent through her actions.*

4: Jacob and Alexis are in a couple of classes together and have hung out a few times. One night, they meet up at a party. Both are drunk, obviously so. They start to leave together but Alexis’s friends come over and check in with her as they feel she’s too drunk to go home with him. She leaves with him anyway and they go back to his room. She tells him that she doesn’t want to have sex with him. He agrees but then once they’re in his room, he keeps trying to take her pants off. She says no, she’ll kiss him but doesn’t want him to take her pants off. He tells her that if she doesn’t sleep with him he’ll tell everyone that she’s a tease and that no one wants to have that reputation. He keeps pushing and pushing and eventually she stops saying no and lets him take her pants off. Once her pants are off, he asks her if she has a condom. She says she doesn’t, but that she is on the pill. He takes that as a yes and they have sex.

*This does constitute a violation of Bowdoin’s Student Sexual Misconduct Policy. Alexis was incapable of providing effective consent, because Jacob threatened and coerced Alexis to engage in sexual activity until she felt like she had no option other than to say yes. Because of her condition, the threat, and his coercion, Alexis did not provide effective consent.*

5: Patrick and Ed are hanging out at Supersnacks one night and start talking. They decide to go home together to watch a movie and head back to Ed’s house. Patrick is surprised when they go to Ed’s room to watch the movie, rather than watching it in the Common Room. He likes him though and hopes things go well and so they go into his room. Ed keeps trying to kiss him and he keeps moving away from him. He never asks
him if he’s interested but just keeps trying to touch him and kiss him. Patrick feels very uncomfortable, but isn’t really sure what to do so he just keeps moving away. Ed stops for a while, but does eventually start up again. This time, while he is trying to kiss Patrick, he grabs Patrick’s butt as he tries to pull him close to him. Patrick pushes him away and leaves his room.

This does constitute a violation of Bowdoin’s Student Sexual Misconduct Policy, as it would be considered “non-consensual sexual contact” as Ed touched Patrick’s intimate parts, in this case his buttocks, without his consent.

6: Taylor has been receiving strange emails with pornographic pictures in them. She doesn’t know from whom they are coming and begins to feel like she is being targeted for some reason. She talks to her Dean and files a report with Security, but the emails keep coming. Some of the emails are just pictures and some have messages on them like “We know this is how you like it.” She starts to feel like she can’t go anywhere and feels very afraid, as the messages seem aimed at her and focused on her sexually. Security finally figures out that it was Carlos and Sarah who were sending the emails. They explain that it was only a joke and that they were tired of Taylor always talking down to guys and thinking she’s so great.

This does constitute a violation of Bowdoin’s Student Sexual Misconduct Policy. These actions constitute sexual harassment and would be considered intimidating, hostile and offensive and clearly interfering with Taylor’s right to equally participate in College life.

7: Mila is out at a party one night when she notices a group of guys staring at her in what she perceives as a threatening way. She looks away and tries to avoid them. Later in the night, when she is leaving, she sees one of the guys standing near her. When he sees her looking at him, he loudly says “slut” and walks away.

This does not constitute a violation of Bowdoin’s Student Sexual Misconduct Policy. Though the behavior is inappropriate and offensive, it is not sufficiently serious that is interferes with Mila’s College experience. It could, however, be considered “Conduct which is unbecoming of a Bowdoin student,” a violation of the Academic Honor Code and Social Code. If Mila addressed the behavior and it happened again, or if it became a pattern, then it could be a violation of the Student Sexual Misconduct Policy.

8: Ada and Harper have been dating seriously for six months. One night, Ada takes pictures of Harper naked. Harper is intoxicated and allows the pictures to be taken, but makes Ada promise to delete them. A few weeks later, Harper and Ada break up and Ada is very angry. She finds the pictures on her phone and posts them to her Facebook page.
This does constitute a violation of Bowdoin’s Student Sexual Misconduct Policy as the Policy clearly states that to transmit identifiable images of intimate parts of another person constitutes Sexual Exploitation.