

II. Scope of Policy and Jurisdiction

CCSNH and its Colleges prohibit sexual misconduct/sexual harassment against any person participating in or attempting to participate in education programs and activities of CCSNH/Colleges. The scope and definitions of sexual misconduct and sexual harassment under federal and state laws differ, as described below.

Sexual misconduct by employees is addressed under Policies 323.01 and 323.02.

A. Title IX Sexual Harassment

Under the federal Title IX regulations, sexual harassment includes the following conduct on the basis of sex which takes place within the context of a CCSNH/College education program and activity (on campus or any other location within the United States):

1. “Quid pro quo” sexual harassment by a CCSNH/College employee: Conditioning a CCSNH/College aid, benefit or service (such as a promotion or favorable evaluation, or a better grade in a course) on an individual’s participation in unwelcome sexual conduct;
2. “Hostile environment” sexual harassment: Unwelcome conduct based on sex that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies an individual’s equal access to CCSNH/College education programs and activities; or
3. Sexual assault, dating violence, domestic violence and stalking, as defined in the
 - i. *Sexual Assault*: An offense classified as a Forcible or Non-Forcible Sex Offense under the uniform crime reporting system of the FBI. Those offenses are –
 - a. *Non-Forcible Sex Offenses*: incest and statutory rape. In New Hampshire, only children aged 16 and older can give consent to sexual contact with adults unless the two parties are legally married. A teenager under 13 cannot consent to any sexual contact. Children who are between 13 and 16 may consent to a sexual act when their partner is less than four years older than they are.
 - b. *Forcible Sex Offenses*: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is in a state of incapacitation. Such sexual acts include:
 - Forcible rape: sexual intercourse with a person, forcibly and/or without that person’s consent, or in instances where the victim is in a state of incapacitation.
 - Forcible oral or anal sexual intercourse with another person, forcibly or without consent, or because of incapacitation.
 - Sexual assault with an object: use of an object or instrument to unlawfully penetrate, however, slightly, the genital or anal opening of the body of another person, forcibly, or without consent or because of incapacitation.
 - Forcible fondling: the touching of the private body parts (genitals, buttocks or breasts) of another person for the purpose of sexual gratification, forcibly, or without consent, or because of incapacitation.
 - c. *Consent*, for purposes of this policy, means: an affirmative decision to engage in mutually acceptable sexual activity given by clear actions or words. It is an informed decision made freely, willingly, and actively by all parties. Consent is knowing and voluntary. Consent is active, not passive. Accordingly, silence or absence of resistance cannot be interpreted as consent. Consent can be given by words or actions so long as those words or actions may be reasonably understood to give permission regarding sexual activity. Individuals cannot give consent if they are incapacitated due to alcohol or legal or illegal drugs, or under the age of 16.
 - ii. *Dating Violence*: physical or sexual abuse, or threats of physical or sexual abuse, or emotional abuse committed by a person:
 - a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - b. Where the existence of such a relationship is determined based on consideration of: (i) the length of relationship; (ii) the type of relationship; and (iii) the frequency of interaction between persons in the relationship.
 - iii. *Domestic Violence*: physical or sexual abuse, or threats of physical or sexual abuse, or emotional abuse among current or former spouses or cohabitants, or people who share a child in common.

- iv. *Stalking*: engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - a. Fear for their safety or the safety of others; or
 - b. Suffer severe emotional distress.

Sexual harassment which does not meet one of the specific definitions above, or which occurs outside a CCSNH/College education program and activity may be covered under Subsection B or C below.

A. Sexual Harassment Under the New Hampshire Law Against Discrimination

Sexual harassment is defined differently under New Hampshire's discrimination law and regulations. These laws define sexual harassment as: unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal or physical conduct of a sexual nature constitutes sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's educational benefits or employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for decisions regarding educational benefits or employment affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with a student's academic performance or an individual's work performance, or creating an intimidating, hostile, or offensive environment.

The term "consent" under A.3 above shall also apply, to the extent relevant, to allegations in this section.

C. Sexual Misconduct Under NH RSA 188-H

Sexual misconduct under RSA 188-H is a broadly defined term that includes: (1) all forms of sexual harassment under Title IX, Title VII or State law under subsections A. and B. above; and (2) any other incident of sexual violence, gender-based violence, or violence based on sexual orientation or gender identity or expression. The term "consent" under A.3 above shall also apply, to the extent relevant, to allegations of sexual harassment under this section.

D. Retaliation

CCSNH also prohibits retaliation against anyone who is involved in the making or reporting of a complaint, or in the investigation or hearing of a formal complaint of sexual harassment. Incidents of retaliation will be addressed under Policy 730.06 (Student Code of Conduct) for alleged retaliation by students.