



New Hampshire

Department of Education

Technical Advisory- HB 1240

*This Technical Advisory continues the New Hampshire Department of Education's communication regarding the bills which were passed into law during the 2019-2020 legislative session. **This new law becomes effective January 1, 2021.***

During the 2019-2020 legislative session, in response to a very public sexual assault matter which occurred in a New Hampshire public school, the legislature passed and the governor signed HB 1240. This new law amends the criminal law, but affects the field of education. Specifically, HB 1240 amends both the Aggravated Felonious Sexual Assault (RSA 632-A:2) and Felonious Sexual Assault (RSA 632-A:3) laws to prohibit “an employee, contractor, or volunteer at a primary or secondary educational institution” from having a sexual relationship with a student.

This new law makes it a crime for an educator to have a sexual relationship with a student—regardless of the student's age—even if the student is 18. It is also important to note that the victim cannot consent to the sexual relationship—put another way, consent of the victim is not a defense.

The prohibition on a sexual relationship between a student and an educator continues up to 10 months after the student's graduation or departure from school. This provision mirrors the language in the Code of Conduct for New Hampshire Educational Professionals to recognize the inherent power differential which exists between educators—who are in a role of authority—and the students that they teach.

In pertinent part, the Aggravated Felonious Sexual Assault law will now read as follows:

A person is guilty of the felony of aggravated felonious sexual assault if such person engages in sexual penetration with another person under any of the following circumstances: . . .

(k)(1) When the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and is more than 4 years older than the victim.

(2) When the actor is an employee, contractor, or volunteer at a primary or secondary educational institution and the victim is a student and up to 10 months after the student's graduation or departure.

(3) Consent of the victim under any of the circumstances set forth in subparagraph (k) shall not be considered a defense.

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Also in pertinent part, the Felonious Sexual Assault law will now read as follows:

A person is guilty of a class B felony if such person:

III (a) Engages in sexual contact with a person:

- (1) Who is under 13 years of age.
- (2) Thirteen years of age or older and under 18 years of age when the actor is in a position of authority over the victim and is more than 4 years older than the victim.
- (3) When the actor is an employee, contractor, or volunteer at a primary or secondary educational institution and the victim is a student and up to 10 months after the student's graduation or departure.

(b) Consent of the victim under any of the circumstances set forth in subparagraph (a) shall not be considered a defense.

As mentioned previously, this law was passed in response to a very public case where an educator was having a sexual relationship with a student. Because the student was 18 years of age, the school district did not report the relationship to the police. As such, school districts and educators should now be aware that a sexual relationship with a student—*regardless of the student's age*—is now criminal. Such a relationship was already a violation of the Educator Code of Conduct. If such a relationship is discovered, the police and DCYF should be contacted immediately. A follow-up report should then be made directly to the Department of Education's Governance Unit, so that, if applicable, appropriate action can be taken upon the educator's credential.

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