

The Applicability of the Code of Ethics and Code of Conduct for New Hampshire Educators During the COVID-19 pandemic

During this unprecedented and turbulent time, educators have recently undertaken a significant task in transitioning to remote instruction for New Hampshire students. In this time of remote instruction, educators are finding themselves utilizing new tools and engaging in teaching methods which might be unique and perhaps unfamiliar. The use of electronic media also allows educators unparalleled access to students.

Additionally, this pandemic is a time of great uncertainty for everyone and therefore, it is not uncommon for people to seek comfort and guidance from individuals whom they feel close to and who are accessible. For many children, those “go-to” people who offer comfort and guidance in times of need, are educators. It is for these very reasons that the Department of Education is taking this opportunity to remind the field that the Code of Ethics and Code of Conduct remain valid during this time and, in fact, these two documents have never before been so pertinent.

The Code of Ethics and Code of Conduct help educators to establish and maintain appropriate, professional boundaries when interacting with students and to navigate the inevitable ethical issues which arise. As a brief reminder, the Code of Ethics provides a set of guiding principles which articulate the responsibilities which are common to all members of the education profession—even individuals who are not certified educators—and are aspirational in nature. The Code of Conduct, however, is applicable to credential holders and sets forth the lowest standard of care for the profession. A violation of one of the principles of the Code of Conduct could result in a sanction against an educator’s credential.

During remote instruction, educators and students will be working and communicating with each other through various forms of electronic media and may have contact and access with one another that would not normally occur within the four walls of the school building. As such, it is foreseeable that an educator might find himself or herself in a situation in which appropriate boundaries with a student are being tested. While all of the principles of the Code of Ethics and Conduct remain applicable, at this particular time, there should be heightened focus on Principle 4—The Responsible and Ethical Use of Technology. This specific principle, as it is laid out in the Code of Ethics and the Code of Conduct are recited here for convenience:

Code of Ethics—Principle IV:

The educator considers the impact of consuming, creating, distributing and communicating information through the use of any and all types of technology. In fulfillment of this principle, the educator:

- Utilizes social media responsibly, transparently and primarily for the purpose of teaching and learning;
- Considers the ramifications and public perception of using social media;
- Exercises prudence to establish and maintain appropriate professional boundaries of time and place in all electronic communications with students.

Code of Conduct—Ed 510.04:

(a) In fulfilling the responsibilities and ethical use of technology a credential holder shall consider the impact of consuming, creating, distributing, and communicating information through the use of any and all types of technology.

(b) Unprofessional conduct shall include, but not be limited to:

(1) Engaging in any activities as specified in Ed 510.02(b)(4)-(6)¹ via electronic media with a student or former student up to 10 months after the student's graduation, departure, or departure as specified in Ed 1102.01(f)(1); and

(2) Engaging in inappropriate communication with a student, or former student up to 10 months after the student's graduation, departure, or departure as specified in Ed 1102.01(f)(1) via electronic media.

(c) For the purposes of this section, inappropriate communication shall be determined by considering:

(1) The intent, timing, subject matter, and amount of communication; and

(2) Whether:

a. The communication made was covert in nature;

b. The communication could reasonably be interpreted as solicitous, sexually explicit, or romantic in nature; and

c. The communication involved discussion(s) of the physical or sexual attractiveness or the sexual activities or fantasies of either the credential holder or the student.

It is important to note that section 510.04(c), as set forth above, is a totality test. Meaning, quite simply, that if an allegation pertaining to this particular section is made, that the Department will look at the educator's interaction with a student in its entirety—the analysis will not hinge on any one factor in particular. For example, during this time of remote instruction, some educators are utilizing their personal devices to facilitate working with their classes. While best practice would dictate using a district-issued device to engage in remote instruction, an educator would not be in violation of the Code of Conduct for simply using their personal computer.

¹ The relevant portions of Ed 510.02 provide as follows:

(4) Committing any of the following acts to any minor, or any student or prior student up to 10 months after the student's graduation, departure, or departure in cases as specified in Ed 1102.01(f)(1), including, but not limited to:

a. Abuse, including, but not limited to physical and emotional abuse;

b. Cruelty or any act of endangerment;

c. Any sexual act with or from any student; and

d. Harassment as defined by state or federal law or regulations;

(5) Soliciting or encouraging participation in a romantic or sexual relationship, whether written, verbal, or physical, with a student the credential holder knows or should know is a student or prior student up to 10 months after the student's graduation, departure, or departure in cases as specified in Ed 1102.01(f)(1); and

(6) Soliciting a student, or a former student up to 10 months after the student's graduation, departure, or departure in cases as specified in Ed 1102.01(f)(1), to engage in any illegal activity.

Along these same lines, in an effort to avoid a potential violation of this specific provision of the Code of Ethics and Code of Conduct, educators should be cognizant to only use their work email address when communicating with students and should avoid using their personal email address. Educators should also only use media platforms which have been approved by their districts. Best practice would also dictate that educators keep communication with students through their personal cell phones to a minimum.

The Department of Education also suggests that educators establish set “office hours” in which they are available. These office hours should have a start time and a set time at which the educator will be done for the day and thereby not accessible for students. It could also be multiple blocks of time throughout the day. It is also highly recommended that these set “office hours” should only be during the weekdays. This will help to establish professional boundaries while also ensuring that educators are available to their students. Additionally, educators should be cognizant of engaging in individual communication or interaction with a student. Individual communication with any particular student should be limited. Rather, educators should strive to interact with their students in a group setting.

Some educators who teach younger children, have expressed an interest in reading their class a nightly, bedtime story. While this practice is perfectly acceptable, it is strongly suggested that this bedtime story time be integrated into the educator’s set office hours and clearly communicated to the parents or guardians. Another suggestion would be to record the reading of the story and post it so that students can access it, but that it is not done live.

An additional pitfall for educators to be aware of during this time is the blending of an educator’s professional role into their personal life. However, the Code of Ethics and Code of Conduct remains applicable even during “off hours” when an educator is “off-duty.” During this time of remote instruction, a majority of educators are working from home where many educators might also have their own children. As such, it is easy for the lines between an individual’s professional and personal life to comingle. For example, an educator might post a video of him or herself having a glass of wine or venting their frustration about the pandemic. While this conduct is perhaps innocuous on its face, educators should be mindful that if this action occurs during school hours or during their set “office hours” as discussed above, or is unprofessional in nature, it could implicate their role as an educator and thereby could have adverse consequences on their credential.

This is a time of change, uncertainty, and innovation, and with some mindfulness about the continuing applicability of the Code of Ethics and Code of conduct, it can be a positive time for both students and educators.