What You Should Know About Consent and Other Forms of Sexual Misconduct

Sexual misconduct is a broad term encompassing any behavior of a sexual nature that is non-consensual, committed by force or intimidation or that is otherwise unwelcome. Sexual misconduct is prohibited by Southeast Community College.

Definitions of Sex Related and Civil Rights Offenses

Consent

Consent is an important concept when it comes to sexual assault. Consent must be a willingness or agreement to engage in sexual activity that is freely given with full information of the facts and circumstances.

In Nebraska according to Neb. Rev. Stat. §28-318, without consent is defined as:

(a) (i)The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any *was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;
(b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and
(c) A victim need not resist verbally or physically where it would be useless or futile to do so; and

Force or Threat of Force

Force or threat of force[1] is defined as:

(a) the use of physical force which overcomes the victim's resistance or

(b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

[1] Neb. Rev. Stat. §28-318(9)

First-Degree Sexual Assault of a Child

In Nebraska according to Neb. Rev. Stat. §28-319.01 a person is guilty of first-degree sexual assault of a child when a person:

(a) subjects another person under twelve years of age to sexual penetration and the actor is at least nineteen years of age or older; or
(b) When he or she subjects another person, who is at least twelve years of age but less than sixteen years of age to sexual penetration and the actor is twenty-five years of age or older.

Second- Or Third-Degree Sexual Assault of a Child

In Nebraska according to Neb. Rev. Stat. §28-320.01, a person is guilty of second- or third-degree sexual assault of a child when a person subjects another person fourteen years of age or younger to sexual contact and the actor is at least nineteen years of age or older.

Second- Or Third-Degree Assault

In Nebraska, according to Neb. Rev. Stat. § 28-320, a person is guilty of second- or third-degree assault when any person subjects another person to sexual contact:

(a) without consent of the victim, or
(b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct

At the heart of consent is the concept that every person, has a right to personal sovereignty – not to be acted upon by someone else in a sexual manner unless given clear permission to do so. Connected with this concept is the notion that consent may be broad or narrow and can be limited. *Consent to one form of sexual activity does not automatically imply consent to other forms of sexual activity.*

How Consent is Given

Consent is given verbally or non-verbally, based on an active, informed, mindful, freely decided choice. Intoxication may make this (legally) impossible. Consent means that you cannot make assumptions about what your partner does or does not want. Absence of clear signals is a sign to stop.

The idea of consent eliminates the need to engage in force and resistance behaviors. There is no biological harm to either sex in stopping at any point.

No means no, but no response also means no. Silence and passivity do not equal permissions.

Submission Does Not Equal Consent!

If you receive a "no" and keep pressuring/continuing to interact sexually, your behavior is a coercive influence on the other party. To be valid, consent must be given prior to or contemporaneously with sexual activity.

In a nonviolent community, it is expected that all members respect all other members at all times, including in the context of sexuality. Respect means paying attention to verbal and non-verbal cues, desires, and boundaries. "After the fact" is not the time to discuss boundaries.

Communicate!

Sexual Harassment

Sexual harassment is any unwelcome behavior (verbal, written or physical) that is directed at someone because of the person's sex or gender and that is sufficiently severe, persistent or pervasive that it unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's programs and/or activities by creating a hostile, humiliating, demeaning or sexually offensive academic, residential, working or social environment; and/or is based on real or reasonable perceived power differentials and submission to or rejection of such conduct is believed to carry consequences for the student's education or employment.

Sexual Assault

In Nebraska, sexual assault is defined as any person who subjects another person to sexual penetration[2]

- without the consent of the victim
- who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct
- when the actor is nineteen years of age or older and the victim is at least twelve but less than sixteen years of age.

Stalking

In Nebraska, stalking[3], for purposes of prosecution is defined as any person who willfully harasses another person or a family or household member of such person with the intent to injure, terrify, threaten, or intimidate commits the offense of stalking. Stalking can be carried out in person or by electronic mechanisms (cell phone, Internet, fax, cameras) and examples include repeated maintenance of physical or visual proximity to the victim; repeated following, approaching or confronting the victim; entering property occupied by the victim;

[2] Neb. Rev. Stat. §28-319(1)(a) and §28-320(1)

[3] Neb. Rev. Stat. §28-311.03

photographing or videotaping the victim without permission; or unwelcome or unsolicited written or electronic communication with the victim.

Sexual Exploitation

Sexual exploitation involves taking or attempting to take non-consensual sexual advantage of another person. Sexual exploitation can include observing another person's nudity or sexual activity without consent; distribution of images, photos, videos, or audio recordings of sexual activity or nudity with the knowledge and consent of all parties involved; prostituting another person; engaging in sexual activity with another person while knowingly infected with a sexually transmitted disease or the human immunodeficiency virus (HIV), without informing the other person; or exposing one's genitals in non-consensual circumstances.

Domestic Abuse/Violence

Domestic abuse/violence includes crimes of violence, physical pain, bodily injury and/or nonconsensual sexual contact or penetration committed by a current or former spouse or intimate partners of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse.

Dating Violence

Dating violence is a pattern of abusive behaviors (physical, verbal and/or emotional) used to exert power and control over a dating partner. The existence of this relationship is gauged by the length, type and frequency of interaction within the relationship.

Bullying

Bullying is a widespread and serious problem that can happen anywhere. It is not a developmental phase an individual has to go through, it is not "just messing around," and it is not something to grow out of. Bullying can cause serious and lasting harm and is prohibited at SCC. Additionally, bullying can be a precursor to sexual misconduct offenses.

Bullying is any intentional gesture or any intentional written, verbal, electronic or physical act or threat that is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for a student or staff member that a reasonable person, under the circumstances, knows or should know will have the effect of:

- harming a student or employee, whether physically or mentally;
- damaging a student's or employee's property;
- placing student or employee in reasonable fear of harm to their person;
- or placing a student or employee in reasonable fear of damage to the student's or employee's property.

Although definitions of bullying vary, most agree that bullying involves:

- **Imbalance of Power:** People who bully use power to control or harm and the people being bullied may have a hard time defending themselves.

- **Intent to Cause Harm**: Actions done by accident are not bullying; the person bullying has a goal to cause harm.
- **Repetition:** Incidents of bullying happen to the same the person over and over by the same person or group.

Bullying can take many forms. Types of bullying include:

- **Verbal**: name-calling, hassling someone, degrading comments
- **Social**: spreading rumors, leaving people out on purpose, interfering negatively on other relationships
- **Physical**: hitting, punching, shoving
- **Cyberbullying**: using the Internet, mobile phones or other digital technologies to harm others, http://www.stopbullying.gov/cyberbullying/index.html

Bystander Intervention and Risk Reduction

A large part of preventing sexual misconduct and other inappropriate behavior (such as bullying) involves recognition of warning signs and early intervention efforts.

"**Bystander intervention**" means safe and positive actions that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, bullying or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and acting to intervene.

"**Risk reduction**" means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

What Does It Mean to Be an Active Bystander?

The College asks that every one of the SCC student body and staff "Be an Active Bystander". This means that as an Active Bystander you care about the SCC community, as well as the surrounding community you live in. Rather than being passive, when they witness troubling behavior, Active Bystanders act to make sure that SCC is a safe, accepting and fun place to go to school and work.

Being an Active Bystander means

- Being Aware
- Deciding to Act
- And when you, "See Something, Say Something."

There are many situations that would call for an Active Bystander to intervene, including disrespectful or abusive behavior, homophobic, racist or sexist jokes, discrimination, risky behavior resulting from substance use, hate behavior or comments or taking advantage of power imbalances (like status, size, or level of inebriation).

Being an Active Bystander doesn't have to be dramatic. It can be as simple as saying something like, "Are you OK?" or "Can I talk to you for a sec?" or "That's really not cool" or "Are you kidding me, really?" Some keys to safe Bystander Actions are:

Get backup

- Get your friends together. "It's time to leave."
- Get your friends for back-up. Sometimes having your friends to back you up makes it easier to intervene.
- If you feel intervening in the situation would be dangerous for you to do, call a campus security personnel OR call 911—it's always an option for intervention.

Distraction

- Invite yourself to tag along.
- "Hey, this party is lame, let's go somewhere else."

Silent stare

- Sometimes a disapproving look can be far more powerful than words.

Humor

- Reduces the tension of an intervention and makes it easier for the person to hear you.
- Do not undermine what you say with too much humor. Funny doesn't mean unimportant.

Bring it home

- Say something, "I hope no one ever talks to you like that."
- Challenge a sexist/rape joke, "I don't get it, can you explain why that joke is funny?"

Be a friend

- "I gotta tell you that the way you acted makes you look like a jerk."
- "As your friend, I thought you were better than this."