S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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Introduced by M. of A. PAULIN, ENGLEBRIGHT, JAFFEE, STIRPE, BARRETT, DINOWITZ, GALEF, HOOPER, MAGNARELLI, OTIS, ROBINSON, RUSSELL, SCARBOROUGH, SKOUFIS, THIELE, TITONE -- Multi-Sponsored by -- M. of A. BRENNAN, LAVINE -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to requiring college campuses to adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking, involving on and off campus students

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The education law is amended by adding a new section 6432-a to read as follows:

S 6432-A. POLICY CONCERNING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE AND STALKING. 1. THE TRUSTEES OR OTHER GOVERNING BOARD OF EVERY COLLEGE CHARTERED BY THE REGENTS OR INCORPORATED BY SPECIAL ACT OF THE LEGISLATURE AND WHICH MAINTAINS A CAMPUS, UNLESS OTHERWISE PROVIDED, SHALL ADOPT A POLICY CONCERNING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING, INVOLVING A STUDENT, BOTH ON AND OFF CAMPUS. THE POLICY SHALL INCLUDE ALL OF THE FOLLOWING:

A. AN AFFIRMATIVE CONSENT STANDARD IN THE DETERMINATION OF WHETHER CONSENT WAS GIVEN BY BOTH PARTIES TO SEXUAL ACTIVITY. "AFFIRMATIVE CONSENT" MEANS AFFIRMATIVE, CONSCIOUS, AND VOLUNTARY AGREEMENT TO ENGAGE IN SEXUAL ACTIVITY. IT IS THE RESPONSIBILITY OF EACH PERSON INVOLVED IN THE SEXUAL ACTIVITY TO ENSURE THAT HE OR SHE HAS THE AFFIRMATIVE CONSENT OF THE OTHER OR OTHERS TO ENGAGE IN THE SEXUAL ACTIVITY. LACK OF PROTEST OR RESISTANCE DOES NOT MEAN CONSENT, NOR DOES SILENCE MEAN CONSENT. AFFIRMATIVE CONSENT MUST BE ONGOING THROUGHOUT A SEXUAL ACTIVITY AND CAN BE REVOKED AT ANY TIME. THE EXISTENCE OF A DATING RELATIONSHIP BETWEEN THE PERSONS INVOLVED, OR THE FACT OF PAST SEXUAL RELATIONS BETWEEN THEM, SHOULD NEVER BY ITSELF BE ASSUMED TO BE AN INDICATOR OF CONSENT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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B. A POLICY THAT, IN THE EVALUATION OF COMPLAINTS IN ANY DISCIPLINARY PROCESS, IT SHALL NOT BE A VALID EXCUSE TO ALLEGED LACK OF AFFIRMATIVE CONSENT THAT THE ACCUSED BELIEVED THAT THE COMPLAINANT CONSENTED TO THE SEXUAL ACTIVITY UNDER EITHER OF THE FOLLOWING CIRCUMSTANCES:

(I) THE ACCUSED'S BELIEF IN AFFIRMATIVE CONSENT AROSE FROM THE INTOXICATION OR RECKLESSNESS OF THE ACCUSED.

(II) THE ACCUSED DID NOT TAKE REASONABLE STEPS, IN THE CIRCUMSTANCES KNOWN TO THE ACCUSED AT THE TIME, TO ASCERTAIN WHETHER THE COMPLAINANT AFFIRMATIVELY CONSENTED.

C. A POLICY THAT THE STANDARD USED IN DETERMINING WHETHER THE ELEMENTS OF THE COMPLAINT AGAINST THE ACCUSED HAVE BEEN DEMONSTRATED IS THE PREPONDERANCE OF THE EVIDENCE.

D. A POLICY THAT, IN THE EVALUATION OF COMPLAINTS IN THE DISCIPLINARY PROCESS, IT SHALL NOT BE A VALID EXCUSE THAT THE ACCUSED BELIEVED THAT THE COMPLAINANT AFFIRMATIVELY CONSENTED TO THE SEXUAL ACTIVITY IF THE ACCUSED KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE COMPLAINANT WAS UNABLE TO CONSENT TO THE SEXUAL ACTIVITY UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

(I) THE COMPLAINANT WAS ASLEEP OR UNCONSCIOUS.

(II) THE COMPLAINANT WAS INCAPACITATED DUE TO THE INFLUENCE OF DRUGS, ALCOHOL, OR MEDICATION, SO THAT THE COMPLAINANT COULD NOT UNDERSTAND THE FACT, NATURE, OR EXTENT OF THE SEXUAL ACTIVITY.

(III) THE COMPLAINANT WAS UNABLE TO COMMUNICATE DUE TO A MENTAL OR PHYSICAL CONDITION.

(IV) THE COMPLAINANT WAS THREATENED WITH PHYSICAL INJURY OR WAS PREVENTED FROM LEAVING THE SITE WHERE THE SEXUAL ACTIVITY OCCURRED, OR WAS COERCED TO CONSENT TO THE SEXUAL ACTIVITY.

2. THE TRUSTEES OR OTHER GOVERNING BOARD OF EVERY COLLEGE CHARTERED BY THE REGENTS OR INCORPORATED BY SPECIAL ACT OF THE LEGISLATURE AND WHICH MAINTAINS A CAMPUS, UNLESS OTHERWISE PROVIDED, SHALL ADOPT DETAILED AND VICTIM-CENTERED POLICIES AND PROTOCOLS REGARDING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING INVOLVING A STUDENT THAT COMPORT WITH BEST PRACTICES AND CURRENT PROFESSIONAL STANDARDS. AT A MINIMUM, THE POLICIES AND PROTOCOLS SHALL COVER ALL OF THE FOLLOWING:

A. A POLICY STATEMENT ON HOW THE INSTITUTION WILL PROVIDE APPROPRIATE PROTECTIONS FOR THE PRIVACY OF INDIVIDUALS INVOLVED, INCLUDING CONFIDENTIALITY.

B. INITIAL RESPONSE BY THE INSTITUTION'S PERSONNEL TO A REPORT OF AN INCIDENT, INCLUDING REQUIREMENTS SPECIFIC TO ASSISTING THE VICTIM, PROVIDING INFORMATION IN WRITING ABOUT THE IMPORTANCE OF PRESERVING EVIDENCE, AND THE IDENTIFICATION AND LOCATION OF WITNESSES.

C. RESPONSE TO STRANGER AND NON-STRANGER SEXUAL ASSAULT.

D. THE PRELIMINARY VICTIM INTERVIEW, INCLUDING THE DEVELOPMENT OF A VICTIM INTERVIEW PROTOCOL, AND A COMPREHENSIVE FOLLOW-UP VICTIM INTERVIEW, AS APPROPRIATE.

E. CONTACTING AND INTERVIEWING THE ACCUSED.

F. SEEKING THE IDENTIFICATION AND LOCATION OF WITNESSES.

G. PROVIDING WRITTEN NOTIFICATION TO THE VICTIM ABOUT THE AVAILABILITY OF, AND CONTACT INFORMATION FOR, ON- AND OFF-CAMPUS RESOURCES AND SERVICES, AND COORDINATION WITH LAW ENFORCEMENT, AS APPROPRIATE.

H. PARTICIPATION OF VICTIM ADVOCATES AND OTHER SUPPORTING PEOPLE.

I. INVESTIGATING ALLEGATIONS THAT ALCOHOL OR DRUGS WERE INVOLVED IN THE INCIDENT.

J. PROVIDING THAT AN INDIVIDUAL WHO PARTICIPATES AS A COMPLAINANT OR WITNESS IN AN INVESTIGATION OF SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING WILL NOT BE SUBJECT TO DISCIPLINARY SANCTIONS FOR

A VIOLATION OF THE INSTITUTION'S STUDENT CONDUCT POLICY AT OR NEAR THE TIME OF THE INCIDENT, UNLESS THE INSTITUTION DETERMINES THAT THE VIOLATION WAS EGREGIOUS, INCLUDING, BUT NOT LIMITED TO, AN ACTION THAT PLACES THE HEALTH OR SAFETY OF ANY OTHER PERSON AT RISK OR INVOLVES PLAGIARISM, CHEATING, OR ACADEMIC DISHONESTY.

K. THE ROLE OF THE INSTITUTIONAL STAFF SUPERVISION.

L. A COMPREHENSIVE, TRAUMA-INFORMED TRAINING PROGRAM FOR CAMPUS OFFICIALS INVOLVED IN INVESTIGATING AND ADJUDICATING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING CASES.

M. PROCEDURES FOR CONFIDENTIAL REPORTING BY VICTIMS AND THIRD PARTIES.

3. THE TRUSTEES OR OTHER GOVERNING BOARD OF EVERY COLLEGE CHARTERED BY THE REGENTS OR INCORPORATED BY SPECIAL ACT OF THE LEGISLATURE AND WHICH MAINTAINS A CAMPUS, UNLESS OTHERWISE PROVIDED, SHALL, TO THE EXTENT FEASIBLE, ENTER INTO MEMORANDA OF UNDERSTANDING, AGREEMENTS, OR COLLABORATIVE PARTNERSHIPS WITH EXISTING ON-CAMPUS AND COMMUNITY-BASED ORGANIZATIONS, INCLUDING RAPE CRISIS CENTERS, TO REFER STUDENTS FOR ASSISTANCE OR MAKE SERVICES AVAILABLE TO STUDENTS, INCLUDING COUNSELING, HEALTH, MENTAL HEALTH, VICTIM ADVOCACY, AND LEGAL ASSISTANCE, AND INCLUDING RESOURCES FOR THE ACCUSED.

4. THE TRUSTEES OR OTHER GOVERNING BOARD OF EVERY COLLEGE CHARTERED BY THE REGENTS OR INCORPORATED BY SPECIAL ACT OF THE LEGISLATURE AND WHICH MAINTAINS A CAMPUS, UNLESS OTHERWISE PROVIDED, SHALL IMPLEMENT COMPREHENSIVE PREVENTION AND OUTREACH PROGRAMS ADDRESSING SEXUAL VIOLENCE, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING. A COMPREHENSIVE PREVENTION PROGRAM SHALL INCLUDE A RANGE OF PREVENTION STRATEGIES, INCLUDING, BUT NOT LIMITED TO, EMPOWERMENT PROGRAMMING FOR VICTIM PREVENTION, AWARENESS RAISING CAMPAIGNS, PRIMARY PREVENTION, BYSTANDER INTERVENTION, AND RISK REDUCTION. OUTREACH PROGRAMS SHALL BE PROVIDED TO MAKE STUDENTS AWARE OF THE INSTITUTION'S POLICY ON SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING. AT A MINIMUM, AN OUTREACH PROGRAM SHALL INCLUDE A PROCESS FOR CONTACTING AND INFORMING THE STUDENT BODY, CAMPUS ORGANIZATIONS, ATHLETIC PROGRAMS, AND STUDENT GROUPS ABOUT THE INSTITUTION'S SEXUAL ASSAULT POLICY, THE PRACTICAL IMPLICATIONS OF AN AFFIRMATIVE CONSENT STANDARD, AND THE RIGHTS AND RESPONSIBILITIES OF STUDENTS UNDER THE POLICY.

5. A. EVERY COLLEGE UNDER THIS SECTION SHALL PROVIDE COPIES OF THE POLICIES AND PROTOCOLS REQUIRED TO BE ADOPTED UNDER SUBDIVISIONS ONE AND TWO OF THIS SECTION TO ALL STUDENTS ENROLLED IN SAID COLLEGE.

B. EACH COLLEGE SHALL ANNUALLY FILE WITH THE DEPARTMENT ON OR BEFORE THE FIRST DAY OF JULY A CERTIFICATE OF COMPLIANCE WITH THE PROVISIONS OF THIS SECTION, TOGETHER WITH COPIES OF THE POLICIES AND PROTOCOLS REQUIRED TO BE ADOPTED BY SUCH COLLEGE UNDER THIS SECTION.

C. IF A COLLEGE FAILS TO FILE A CERTIFICATE OF COMPLIANCE PURSUANT TO PARAGRAPH B OF THIS SUBDIVISION WITHIN SIXTY DAYS OF THE TIME REQUIRED, SUCH COLLEGE SHALL NOT BE ELIGIBLE TO RECEIVE ANY STATE AID OR ASSISTANCE UNTIL SUCH CERTIFICATE OF COMPLIANCE IS DULY FILED.

S 2. Paragraphs a and c of subdivision 3 of section 6431 of education law, as amended by chapter 13 of the laws of 2009, are amended to read as follows:

a. educating the campus community, including security personnel and those persons who advise or supervise students, about sexual assault, domestic violence, DATING VIOLENCE and stalking offenses pursuant to section sixty-four hundred thirty-two of this article;

c. reporting sexual assaults, domestic violence, DATING VIOLENCE and stalking incidents and assisting victims during investigations, CONSIST-

ENT WITH THE PROVISIONS OF SUBDIVISION TWO OF SECTION SIXTY-FOUR HUNDRED THIRTY-TWO-A OF THIS ARTICLE;

S 3. The section heading, the opening paragraph and subdivisions 2 and 5 of section 6432 of education law, as amended by chapter 13 of the laws of 2009, are amended to read as follows:

Sexual assault, domestic violence, DATING VIOLENCE and stalking prevention information. Each college shall inform incoming students about ITS POLICIES AND PROTOCOLS REGARDING sexual assault, domestic violence, DATING VIOLENCE, and stalking, INCLUDING prevention measures through COMPREHENSIVE PREVENTION AND OUTREACH PROGRAMS AS DESCRIBED IN SUBDIVISION FOUR OF SECTION SIXTY-FOUR HUNDRED THIRTY-TWO-A OF THIS ARTICLE AND SUCH OTHER programs which may include workshops, seminars, discussion groups, and film presentations, in order to disseminate information, promote discussion, encourage reporting, and facilitate prevention of sexual assault, domestic violence, DATING VIOLENCE and stalking. Such information shall include, but not be limited to:

2. the penalties for the commission of a sex offense, a domestic violence incident, A DATING VIOLENCE INCIDENT and a stalking offense;

5. the nature of and common circumstances relating to sex offenses, incidents of domestic violence, INCIDENTS OF DATING VIOLENCE and stalking offenses on college campuses; and

S 4. This act shall take effect immediately.