

STATE OF NEW YORK

8576

IN SENATE

March 15, 2022

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to implementation of sexual harassment prevention and response policies and procedures by colleges and universities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The article heading of article 129-B of the education law,
2 as added by chapter 76 of the laws of 2015, is amended to read as
3 follows:

4 IMPLEMENTATION BY COLLEGES AND UNIVERSITIES OF SEXUAL ASSAULT, DATING
5 VIOLENCE, DOMESTIC VIOLENCE, SEXUAL HARASSMENT AND STALKING PREVENTION
6 AND RESPONSE POLICIES AND PROCEDURES

7 § 2. Subdivision 11 of section 6439 of the education law, as added by
8 chapter 76 of the laws of 2015, is amended to read as follows:

9 11. "Domestic violence", "dating violence", "stalking", "sexual
10 harassment" and "sexual assault" shall be defined by each institution in
11 its code of conduct in a manner consistent with applicable federal defi-
12 nitions.

13 § 3. Subdivision 1 of section 6442 of the education law, as added by
14 chapter 76 of the laws of 2015, is amended to read as follows:

15 1. Every institution shall adopt and implement the following policy as
16 part of its code of conduct: "The health and safety of every student at
17 the {Institution} is of utmost importance. {Institution} recognizes that
18 students who have been drinking and/or using drugs (whether such use is
19 voluntary or involuntary) at the time that violence, including but not
20 limited to domestic violence, dating violence, stalking, sexual harass-
21 ment or sexual assault occurs may be hesitant to report such incidents
22 due to fear of potential consequences for their own conduct.
23 {Institution} strongly encourages students to report domestic violence,
24 dating violence, stalking, sexual harassment or sexual assault to insti-
25 tution officials. A bystander acting in good faith or a reporting indi-
26 vidual acting in good faith that discloses any incident of domestic
27 violence, dating violence, stalking, sexual harassment or sexual assault

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

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1 to {Institution's} officials or law enforcement will not be subject to
2 {Institution's} code of conduct action for violations of alcohol and/or
3 drug use policies occurring at or near the time of the commission of the
4 domestic violence, dating violence, stalking, sexual harassment or sexu-
5 al assault."

6 § 4. Subdivision 2 of section 6443 of the education law, as added by
7 chapter 76 of the laws of 2015, is amended to read as follows:

8 2. Have disclosures of domestic violence, dating violence, stalking,
9 sexual harassment and sexual assault treated seriously;

10 § 5. Paragraph f of subdivision 1 and paragraphs b and c of subdivi-
11 sion 5 of section 6444 of the educational law, as added by chapter 76 of
12 the laws of 2015, are amended to read as follows:

13 f. File a report of sexual assault, domestic violence, dating
14 violence, sexual harassment and/or stalking and the right to consult the
15 Title IX Coordinator and other appropriate institution representatives
16 for information and assistance. Reports shall be investigated in accord-
17 ance with institution policy and a reporting individual's identity shall
18 remain private at all times if said reporting individual wishes to main-
19 tain privacy;

20 b. The right to a process in all student judicial or conduct cases,
21 where a student is accused of sexual assault, domestic violence, dating
22 violence, stalking, sexual harassment or sexual activity that may other-
23 wise violate the institution's code of conduct, that includes, at a
24 minimum: (i) notice to a respondent describing the date, time, location
25 and factual allegations concerning the violation, a reference to the
26 specific code of conduct provisions alleged to have been violated, and
27 possible sanctions; (ii) an opportunity to offer evidence during an
28 investigation, and to present evidence and testimony at a hearing, where
29 appropriate, and have access to a full and fair record of any such hear-
30 ing, which shall be preserved and maintained for at least five years
31 from such a hearing and may include a transcript, recording or other
32 appropriate record; and (iii) access to at least one level of appeal of
33 a determination before a panel, which may include one or more students,
34 that is fair and impartial and does not include individuals with a
35 conflict of interest. In order to effectuate an appeal, a respondent and
36 reporting individual in such cases shall receive written notice of the
37 findings of fact, the decision and the sanction, if any, as well as the
38 rationale for the decision and sanction. In such cases, any rights
39 provided to a reporting individual must be similarly provided to a
40 respondent and any rights provided to a respondent must be similarly
41 provided to a reporting individual.

42 c. Throughout proceedings involving such an accusation of sexual
43 assault, domestic violence, dating violence, stalking, sexual harassment
44 or sexual activity that may otherwise violate the institution's code of
45 conduct, the right:

46 i. For the respondent, accused, and reporting individual to be accom-
47 panied by an advisor of choice who may assist and advise a reporting
48 individual, accused, or respondent throughout the judicial or conduct
49 process including during all meetings and hearings related to such proc-
50 ess. Rules for participation of such advisor shall be established in the
51 code of conduct.

52 ii. To a prompt response to any complaint and to have the complaint
53 investigated and adjudicated in an impartial, timely, and thorough
54 manner by individuals who receive annual training in conducting investi-
55 gations of sexual violence, the effects of trauma, impartiality, the
56 rights of the respondent, including the right to a presumption that the

1 respondent is "not responsible" until a finding of responsibility is
2 made pursuant to the provisions of this article and the institution's
3 policies and procedures, and other issues including, but not limited to
4 domestic violence, dating violence, stalking, sexual harassment or sexu-
5 al assault.

6 iii. To an investigation and process that is fair, impartial and
7 provides a meaningful opportunity to be heard, and that is not conducted
8 by individuals with a conflict of interest.

9 iv. To have the institution's judicial or conduct process run concur-
10 rently with a criminal justice investigation and proceeding, except for
11 temporary delays as requested by external municipal entities while law
12 enforcement gathers evidence. Temporary delays should not last more than
13 ten days except when law enforcement specifically requests and justifies
14 a longer delay.

15 v. To review and present available evidence in the case file, or
16 otherwise in the possession or control of the institution, and relevant
17 to the conduct case, consistent with institution policies and proce-
18 dures.

19 vi. To exclude their own prior sexual history with persons other than
20 the other party in the judicial or conduct process or their own mental
21 health diagnosis and/or treatment from admittance in the institution
22 disciplinary stage that determines responsibility. Past findings of
23 domestic violence, dating violence, stalking, sexual harassment or sexu-
24 al assault may be admissible in the disciplinary stage that determines
25 sanction.

26 vii. To receive written or electronic notice, provided in advance
27 pursuant to the college or university policy and reasonable under the
28 circumstances, of any meeting they are required to or are eligible to
29 attend, of the specific rule, rules or laws alleged to have been
30 violated and in what manner, and the sanction or sanctions that may be
31 imposed on the respondent based upon the outcome of the judicial or
32 conduct process, at which time the designated hearing or investigatory
33 officer or panel shall provide a written statement detailing the factual
34 findings supporting the determination and the rationale for the sanction
35 imposed.

36 viii. To make an impact statement during the point of the proceeding
37 where the decision maker is deliberating on appropriate sanctions.

38 ix. To simultaneous (among the parties) written or electronic notifi-
39 cation of the outcome of a judicial or conduct process, including the
40 sanction or sanctions.

41 x. To be informed of the sanction or sanctions that may be imposed on
42 the respondent based upon the outcome of the judicial or conduct process
43 and the rationale for the actual sanction imposed.

44 xi. To choose whether to disclose or discuss the outcome of a conduct
45 or judicial process.

46 xii. To have all information obtained during the course of the conduct
47 or judicial process be protected from public release until the appeals
48 panel makes a final determination unless otherwise required by law.

49 § 6. Paragraphs c and e of subdivision 2 of section 6445 of the educa-
50 tion law, as added by chapter 76 of the laws of 2015, are amended to
51 read as follows:

52 c. how and where to report domestic violence, dating violence, stalk-
53 ing, sexual harassment or sexual assault as a victim, survivor or
54 witness;

e. the prevalence of victimization and perpetration of domestic violence, dating violence, stalking, sexual harassment or sexual assault on and off campus during a set time period;

§ 7. Paragraphs a, b, d and g of subdivision 1 and subdivision 2 of section 6446 of the education law, as added by chapter 76 of the laws of 2015, are amended to read as follows:

a. Information regarding privileged and confidential resources they may contact regarding domestic violence, dating violence, stalking, sexual harassment or sexual assault;

b. Information about counselors and advocates they may contact regarding domestic violence, dating violence, stalking, sexual harassment or sexual assault;

d. Information about how the institution shall weigh a request for confidentiality and respond to such a request. Such information shall, at a minimum, include that if a reporting individual discloses an incident to an institution employee who is responsible for responding to or reporting domestic violence, dating violence, stalking, sexual harassment or sexual assault but wishes to maintain confidentiality or does not consent to the institution's request to initiate an investigation, the Title IX Coordinator must weigh the request against the institution's obligation to provide a safe, non-discriminatory environment for all members of its community. The institution shall assist with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of reporting choices;

g. Information regarding institutional crime reporting including, but not limited to: reports of certain crimes occurring in specific geographic locations that shall be included in the institution's annual security report pursuant to the Clery Act, 20 U.S.C. 1092(f), in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual; that the institution is obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual; that a reporting individual shall not be identified in a timely warning; that the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, allows institutions to share information with parents when i. there is a health or safety emergency, or ii. when the student is a dependent on either parent's prior year federal income tax return; and that generally, the institution shall not share information about a report of domestic violence, dating violence, stalking, sexual harassment or sexual assault with parents without the permission of the reporting individual.

2. The institution may take proactive steps, such as training or awareness efforts, to combat domestic violence, dating violence, stalking, sexual harassment or sexual assault in a general way that does not identify those who disclose or the information disclosed.

§ 8. Subdivision 1, paragraphs b and d of subdivision 2 and subdivisions 4, 5 and 6 of section 6447 of the education law, as added by chapter 76 of the laws of 2015, are amended to read as follows:

1. Every institution shall adopt a comprehensive student onboarding and ongoing education campaign to educate members of the institution's community about domestic violence, dating violence, stalking, sexual harassment and sexual assault, in compliance with applicable federal

1 laws, including the Clery Act as amended by the Violence Against Women
2 Act reauthorization of 2013, 20 U.S.C. 1092(f).

3 b. Relevant definitions including, but not limited to, the definitions
4 of sexual assault, domestic violence, dating violence, stalking, sexual
5 harassment, confidentiality, privacy, and consent;

6 d. The role of the Title IX Coordinator, university police or campus
7 security, and other relevant offices that address domestic violence,
8 dating violence, stalking, sexual harassment and sexual assault
9 prevention and response;

10 4. Every institution shall use multiple methods to educate students
11 about violence prevention and shall share information on domestic
12 violence, dating violence, stalking, sexual harassment and sexual
13 assault prevention with parents of enrolling students.

14 5. Every institution shall offer to all students general and specific
15 training in domestic violence, dating violence, stalking, sexual harass-
16 ment and sexual assault prevention and shall conduct a campaign that
17 complies with the Violence Against Women Act, 20 U.S.C. 1092(f), to
18 educate the student population. They shall, as appropriate, provide or
19 expand specific training to include groups such as international
20 students, students that are also employees, leaders and officers of
21 registered or recognized student organizations, and online and distance
22 education students. They shall also provide specific training to members
23 of groups that the institution identifies as high-risk populations.

24 6. Every institution shall require that each student leader and offi-
25 cer of student organizations recognized by or registered with the insti-
26 tution, as well as those seeking recognition by the institution,
27 complete training on domestic violence, dating violence, stalking, sexu-
28 al harassment or sexual assault prevention prior to receiving recogni-
29 tion or registration, and each institution shall require that each
30 student-athlete complete training on domestic violence, dating violence,
31 stalking, sexual harassment or sexual assault prevention prior to
32 participating in intercollegiate athletic competition.

33 § 9. The opening paragraph of subdivision 1 of section 6449 of the
34 education law, as added by chapter 76 of the laws of 2015, is amended to
35 read as follows:

36 Institutions shall annually report to the department the following
37 information about reports of domestic violence, dating violence, stalk-
38 ing, sexual harassment and sexual assault:

39 § 10. This act shall take effect immediately.