

# STATE OF NEW YORK

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3212

2023-2024 Regular Sessions

## IN SENATE

January 30, 2023

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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-

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

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tution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, sexual harassment or sexual assault to {Institution's} officials or law enforcement will not be subject to {Institution's} code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, sexual harassment or sexual assault."

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

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

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

f. File a report of sexual assault, domestic violence, dating violence, sexual harassment and/or stalking and the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance. Reports shall be investigated in accordance with institution policy and a reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy;

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

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

i. For the respondent, accused, and reporting individual to be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process. Rules for participation of such advisor shall be established in the code of conduct.

ii. To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough

1 manner by individuals who receive annual training in conducting investi-  
2 gations of sexual violence, the effects of trauma, impartiality, the  
3 rights of the respondent, including the right to a presumption that the  
4 respondent is "not responsible" until a finding of responsibility is  
5 made pursuant to the provisions of this article and the institution's  
6 policies and procedures, and other issues including, but not limited to  
7 domestic violence, dating violence, stalking, sexual harassment or sexu-  
8 al assault.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 § 7. Paragraphs a, b, d and g of subdivision 1 and subdivision 2 of  
8 section 6446 of the education law, as added by chapter 76 of the laws of  
9 2015, are amended to read as follows:

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

13 b. Information about counselors and advocates they may contact regard-  
14 ing domestic violence, dating violence, stalking, sexual harassment or  
15 sexual assault;

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

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

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

52 § 8. Subdivision 1, paragraphs b and d of subdivision 2 and subdivi-  
53 sions 4, 5 and 6 of section 6447 of the education law, as added by chap-  
54 ter 76 of the laws of 2015, are amended to read as follows:

55 1. Every institution shall adopt a comprehensive student onboarding  
56 and ongoing education campaign to educate members of the institution's

1 community about domestic violence, dating violence, stalking, sexual  
2 harassment and sexual assault, in compliance with applicable federal  
3 laws, including the Clery Act as amended by the Violence Against Women  
4 Act reauthorization of 2013, 20 U.S.C. 1092(f).

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

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

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

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

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

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

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

41 § 10. This act shall take effect immediately.