STATE OF NEW YORK

3212

2023-2024 Regular Sessions

IN SENATE

January 30, 2023

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:

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

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

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

11. "Domestic violence", "dating violence", "stalking"**, "sexual harassment"** and "sexual assault" shall be defined by each institution in its code of conduct in a manner consistent with applicable federal definitions.

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

1. Every institution shall adopt and implement the following policy as part of its code of conduct: "The health and safety of every student at the {Institution} is of utmost importance. {Institution} recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, **sexual harassment** or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. {Institution} strongly encourages students to report domestic violence, 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

manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made pursuant to the provisions of this article and the institution's policies and procedures, and other issues including, but not limited to domestic violence, dating violence, stalking**, sexual harassment** or sexual assault.

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

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

v. To review and present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the conduct case, consistent with institution policies and procedures.

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

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

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

ix. To simultaneous (among the parties) written or electronic notification of the outcome of a judicial or conduct process, including the sanction or sanctions.

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

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

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

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

c. how and where to report domestic violence, dating violence, stalking, **sexual harassment** or sexual assault as a victim, survivor or 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 laws, including the Clery Act as amended by the Violence Against Women Act reauthorization of 2013, 20 U.S.C. 1092(f).

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

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

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

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

6. Every institution shall require that each student leader and officer of student organizations recognized by or registered with the institution, as well as those seeking recognition by the institution, complete training on domestic violence, dating violence, stalking, **sexual harassment** or sexual assault prevention prior to receiving recognition or registration, and each institution shall require that each student-athlete complete training on domestic violence, dating violence, stalking, **sexual harassment** or sexual assault prevention prior to participating in intercollegiate athletic competition.

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

Institutions shall annually report to the department the following information about reports of domestic violence, dating violence, stalking**, sexual harassment** and sexual assault:

§ 10. This act shall take effect immediately.