

# STATE OF NEW YORK

5965

2015-2016 Regular Sessions

## IN SENATE

June 14, 2015

Introduced by Sen. LAVALLE -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the education law, in relation to the implementation by colleges and universities of sexual assault, dating violence, domestic violence and stalking prevention and response policies and procedures; and to amend the civil practice law and rules, in relation to privacy of name in certain legal challenges to college/university disciplinary findings; and making appropriations therefor

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

1 Section 1. The education law is amended by adding a new article 129-B  
2 to read as follows:

3 ARTICLE 129-B

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

7 Section 6439. Definitions.

8 6440. General provisions.

9 6441. Affirmative consent to sexual activity.

10 6442. Policy for alcohol and/or drug use amnesty.

11 6443. Students' bill of rights.

12 6444. Response to reports.

13 6445. Campus climate assessments.

14 6446. Options for confidential disclosure.

15 6447. Student onboarding and ongoing education.

16 6448. Privacy in legal challenges.

17 6449. Reporting aggregate data to the department.

18 § 6439. Definitions. As used in this article, the following terms have  
19 the following meanings:

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

LBD12034-02-5

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1 1. "Institution" shall mean any college or university chartered by the  
2 regents or incorporated by special act of the legislature that maintains  
3 a campus in New York.

4 2. "Title IX Coordinator" shall mean the Title IX Coordinator and/or  
5 his or her designee or designees.

6 3. "Bystander" shall mean a person who observes a crime, impending  
7 crime, conflict, potentially violent or violent behavior, or conduct  
8 that is in violation of rules or policies of an institution.

9 4. "Code of conduct" shall mean the written policies adopted by an  
10 institution governing student behavior, rights, and responsibilities  
11 while such student is matriculated in the institution.

12 5. "Confidentiality" may be offered by an individual who is not  
13 required by law to report known incidents of sexual assault or other  
14 crimes to institution officials, in a manner consistent with state and  
15 federal law, including but not limited to 20 U.S.C. 1092(f) and 20  
16 U.S.C. 1681(a). Licensed mental health counselors, medical providers and  
17 pastoral counselors are examples of institution employees who may offer  
18 confidentiality.

19 6. "Privacy" may be offered by an individual when such individual is  
20 unable to offer confidentiality under the law but shall still not  
21 disclose information learned from a reporting individual or bystander to  
22 a crime or incident more than necessary to comply with this and other  
23 applicable laws, including informing appropriate institution officials.  
24 Institutions may substitute another relevant term having the same mean-  
25 ing, as appropriate to the policies of the institution.

26 7. "Accused" shall mean a person accused of a violation who has not  
27 yet entered an institution's judicial or conduct process.

28 8. "Respondent" shall mean a person accused of a violation who has  
29 entered an institution's judicial or conduct process.

30 9. "Reporting individual" shall encompass the terms victim, survivor,  
31 complainant, claimant, witness with victim status, and any other term  
32 used by an institution to reference an individual who brings forth a  
33 report of a violation.

34 10. "Sexual activity" shall have the same meaning as "sexual act" and  
35 "sexual contact" as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246(3).

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

39 § 6440. General provisions. 1. Every institution shall:

40 a. adopt written rules implementing this article by amending its code  
41 of conduct or other comparable policies;

42 b. annually file with the department on or before the first day of  
43 July, beginning in two thousand sixteen, a certificate of compliance  
44 with the provisions of this article; and

45 c. file a copy of all written rules and policies adopted as required  
46 in this article with the department on or before the first day of July,  
47 two thousand sixteen, and once every ten years thereafter, except that  
48 the second filing shall coincide with the required filing under article  
49 one hundred twenty-nine-A of this chapter, and continue on the same  
50 cycle thereafter.

51 2. All institutional services and protections afforded to reporting  
52 individuals under this article shall be available to all students and  
53 applicable to conduct that has a reasonable connection to that institu-  
54 tion. When such conduct involves students or employees from two or more  
55 institutions, such institutions may work collaboratively to address the  
56 conduct provided that such collaboration complies with the Family Educa-

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1 tional Rights and Privacy Act codified at 20 U.S.C. 1232g; 34 C.F.R.  
2 Part 99.

3 3. If an institution fails to file a certificate of compliance on or  
4 before September first beginning in two thousand sixteen, such institu-  
5 tion shall be ineligible to receive state aid or assistance until it  
6 files such a certificate. The department shall conduct audits of insti-  
7 tutions by random selection, at any time after September first, two  
8 thousand sixteen, to ensure compliance with the provisions of this arti-  
9 cle, and shall post information and statistics regarding compliance with  
10 this article on the department's website.

11 4. A copy of such rules and policies shall be provided by each insti-  
12 tution to all students enrolled in said institution using a method and  
13 manner appropriate to its institutional culture. Each institution shall  
14 also post such rules and policies on its website in an easily accessible  
15 manner to the public.

16 5. The protections in this article apply regardless of race, color,  
17 national origin, religion, creed, age, disability, sex, gender identity  
18 or expression, sexual orientation, familial status, pregnancy, predis-  
19 posing genetic characteristics, military status, domestic violence  
20 victim status, or criminal conviction.

21 6. The provisions of this article shall apply regardless of whether  
22 the violation occurs on campus, off campus, or while studying abroad.

23 7. Institutions shall, where appropriate, utilize applicable state and  
24 federal law, regulations, and guidance in writing the policies required  
25 pursuant to this article.

26 8. Nothing in this article shall be construed to limit in any way the  
27 provisions of the penal law that apply to the criminal action analogous  
28 to the student conduct code violations referenced herein. Action pursued  
29 through the criminal justice process shall be governed by the penal law  
30 and the criminal procedure law.

31 9. Nothing in this article shall be construed to create a new private  
32 right of action for any person.

33 10. Nothing in this article shall be construed to prevent an institu-  
34 tion from continuing an investigation when required by law to continue  
35 such investigation.

36 § 6441. Affirmative consent to sexual activity. 1. Every institution  
37 shall adopt the following definition of affirmative consent as part of  
38 its code of conduct: "Affirmative consent is a knowing, voluntary, and  
39 mutual decision among all participants to engage in sexual activity.  
40 Consent can be given by words or actions, as long as those words or  
41 actions create clear permission regarding willingness to engage in the  
42 sexual activity. Silence or lack of resistance, in and of itself, does  
43 not demonstrate consent. The definition of consent does not vary based  
44 upon a participant's sex, sexual orientation, gender identity, or gender  
45 expression."

46 2. Each institution's code of conduct shall reflect the following  
47 principles as guidance for the institution's community:

48 a. Consent to any sexual act or prior consensual sexual activity  
49 between or with any party does not necessarily constitute consent to any  
50 other sexual act.

51 b. Consent is required regardless of whether the person initiating the  
52 act is under the influence of drugs and/or alcohol.

53 c. Consent may be initially given but withdrawn at any time.

54 d. Consent cannot be given when a person is incapacitated, which  
55 occurs when an individual lacks the ability to knowingly choose to  
56 participate in sexual activity. Incapacitation may be caused by the lack

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1 of consciousness or being asleep, being involuntarily restrained, or if  
2 an individual otherwise cannot consent. Depending on the degree of  
3 intoxication, someone who is under the influence of alcohol, drugs, or  
4 other intoxicants may be incapacitated and therefore unable to consent.

5 e. Consent cannot be given when it is the result of any coercion,  
6 intimidation, force, or threat of harm.

7 f. When consent is withdrawn or can no longer be given, sexual activ-  
8 ity must stop.

9 § 6442. Policy for alcohol and/or drug use amnesty. 1. Every institu-  
10 tion shall adopt and implement the following policy as part of its code  
11 of conduct: "The health and safety of every student at the Institution  
12 is of utmost importance. Institution recognizes that students who have  
13 been drinking and/or using drugs (whether such use is voluntary or  
14 involuntary) at the time that violence, including but not limited to  
15 domestic violence, dating violence, stalking, or sexual assault occurs  
16 may be hesitant to report such incidents due to fear of potential conse-  
17 quences for their own conduct. Institution strongly encourages  
18 students to report domestic violence, dating violence, stalking, or  
19 sexual assault to institution officials. A bystander acting in good  
20 faith or a reporting individual acting in good faith that discloses any  
21 incident of domestic violence, dating violence, stalking, or sexual  
22 assault to Institution's officials or law enforcement will not be  
23 subject to Institution's code of conduct action for violations of  
24 alcohol and/or drug use policies occurring at or near the time of the  
25 commission of the domestic violence, dating violence, stalking, or sexu-  
26 al assault."

27 2. Nothing in this section shall be construed to limit an insti-  
28 tution's ability to provide amnesty in additional circumstances.

29 § 6443. Students' bill of rights. Every institution shall adopt and  
30 implement the following "Students' Bill of Rights" as part of its code  
31 of conduct which shall be distributed annually to students, made avail-  
32 able on each institution's website, posted in campus residence halls and  
33 campus centers, and shall include links or information to file a report  
34 and seek a response, pursuant to section sixty-four hundred forty-four  
35 of this article, and the options for confidential disclosure pursuant to  
36 section sixty-four hundred forty-six of this article: "All students have  
37 the right to: 1. Make a report to local law enforcement and/or state  
38 police; 2. Have disclosures of domestic violence, dating violence,  
39 stalking, and sexual assault treated seriously; 3. Make a decision about  
40 whether or not to disclose a crime or violation and participate in the  
41 judicial or conduct process and/or criminal justice process free from  
42 pressure by the institution; 4. Participate in a process that is fair,  
43 impartial, and provides adequate notice and a meaningful opportunity to  
44 be heard; 5. Be treated with dignity and to receive from the institution  
45 courteous, fair, and respectful health care and counseling services,  
46 where available; 6. Be free from any suggestion that the reporting indi-  
47 vidual is at fault when these crimes and violations are committed, or  
48 should have acted in a different manner to avoid such crimes or  
49 violations; 7. Describe the incident to as few institution represen-  
50 tatives as practicable and not be required to unnecessarily repeat a  
51 description of the incident; 8. Be protected from retaliation by the  
52 institution, any student, the accused and/or the respondent, and/or  
53 their friends, family and acquaintances within the jurisdiction of the  
54 institution; 9. Access to at least one level of appeal of a determi-  
55 nation; 10. Be accompanied by an advisor of choice who may assist and  
56 advise a reporting individual, accused, or respondent throughout the

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1 judicial or conduct process including during all meetings and hearings  
2 related to such process; and 11. Exercise civil rights and practice of  
3 religion without interference by the investigative, criminal justice, or  
4 judicial or conduct process of the institution."

5 § 6444. Response to reports. 1. Every institution shall ensure that  
6 reporting individuals are advised of their right to:

7 a. Notify university police or campus security, local law enforcement,  
8 and/or state police;

9 b. Have emergency access to a Title IX Coordinator or other appropri-  
10 ate official trained in interviewing victims of sexual assault who shall  
11 be available upon the first instance of disclosure by a reporting indi-  
12 vidual to provide information regarding options to proceed, and, where  
13 applicable, the importance of preserving evidence and obtaining a sexual  
14 assault forensic examination as soon as possible, and detailing that the  
15 criminal justice process utilizes different standards of proof and  
16 evidence and that any questions about whether a specific incident  
17 violated the penal law should be addressed to law enforcement or to the  
18 district attorney. Such official shall also explain whether he or she is  
19 authorized to offer the reporting individual confidentiality or privacy,  
20 and shall inform the reporting individual of other reporting options;

21 c. Disclose confidentially the incident to institution represen-  
22 tatives, who may offer confidentiality pursuant to applicable laws and  
23 can assist in obtaining services for reporting individuals;

24 d. Disclose confidentially the incident and obtain services from the  
25 state or local government;

26 e. Disclose the incident to institution representatives who can offer  
27 privacy or confidentiality, as appropriate, and can assist in obtaining  
28 resources for reporting individuals;

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

35 g. Disclose, if the accused is an employee of the institution, the  
36 incident to the institution's human resources authority or the right to  
37 request that a confidential or private employee assist in reporting to  
38 the appropriate human resources authority;

39 h. Receive assistance from appropriate institution representatives in  
40 initiating legal proceedings in family court or civil court; and

41 i. Withdraw a complaint or involvement from the institution process at  
42 any time.

43 2. Every institution shall ensure that, at a minimum, at the first  
44 instance of disclosure by a reporting individual to an institution  
45 representative, the following information shall be presented to the  
46 reporting individual: "You have the right to make a report to university  
47 police or campus security, local law enforcement, and/or state police or  
48 choose not to report; to report the incident to your institution; to be  
49 protected by the institution from retaliation for reporting an incident;  
50 and to receive assistance and resources from your institution."

51 3. Every institution shall ensure that reporting individuals have  
52 information about resources, including intervention, mental health coun-  
53 seling, and medical services, which shall include information on whether  
54 such resources are available at no cost or for a fee. Every institution  
55 shall also provide information on sexually transmitted infections, sexu-  
56 al assault forensic examinations, and resources available through the



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1 New York state office of victim services, established pursuant to  
2 section six hundred twenty-two of the executive law.

3 4. Every institution shall ensure that individuals are provided the  
4 following protections and accommodations:

5 a. When the accused or respondent is a student, to have the institu-  
6 tion issue a "no contact order" consistent with institution policies and  
7 procedures, whereby continued intentional contact with the reporting  
8 individual would be a violation of institution policy subject to addi-  
9 tional conduct charges; if the accused or respondent and a reporting  
10 individual observe each other in a public place, it shall be the respon-  
11 sibility of the accused or respondent to leave the area immediately and  
12 without directly contacting the reporting individual. Both the accused  
13 or respondent and the reporting individual shall, upon request and  
14 consistent with institution policies and procedures, be afforded a  
15 prompt review, reasonable under the circumstances, of the need for and  
16 terms of a no contact order, including potential modification, and shall  
17 be allowed to submit evidence in support of his or her request. Insti-  
18 tutions may establish an appropriate schedule for the accused and  
19 respondents to access applicable institution buildings and property at a  
20 time when such buildings and property are not being accessed by the  
21 reporting individual;

22 b. To be assisted by the institution's police or security forces, if  
23 applicable, or other officials in obtaining an order of protection or,  
24 if outside of New York state, an equivalent protective or restraining  
25 order;

26 c. To receive a copy of the order of protection or equivalent when  
27 received by an institution and have an opportunity to meet or speak with  
28 an institution representative, or other appropriate individual, who can  
29 explain the order and answer questions about it, including information  
30 from the order about the accused's responsibility to stay away from the  
31 protected person or persons;

32 d. To an explanation of the consequences for violating these orders,  
33 including but not limited to arrest, additional conduct charges, and  
34 interim suspension;

35 e. To receive assistance from university police or campus security in  
36 effecting an arrest when an individual violates an order of protection  
37 or, if university police or campus security does not possess arresting  
38 powers, then to call on and assist local law enforcement in effecting an  
39 arrest for violating such an order, provided that nothing in this arti-  
40 cle shall limit current law enforcement jurisdiction and procedures;

41 f. When the accused or respondent is a student determined to present a  
42 continuing threat to the health and safety of the community, to subject  
43 the accused or respondent to interim suspension pending the outcome of a  
44 judicial or conduct process consistent with this article and the insti-  
45 tution's policies and procedures. Both the accused or respondent and the  
46 reporting individual shall, upon request and consistent with the insti-  
47 tution's policies and procedures, be afforded a prompt review, reason-  
48 able under the circumstances, of the need for and terms of an interim  
49 suspension, including potential modification, and shall be allowed to  
50 submit evidence in support of his or her request;

51 g. When the accused is not a student but is a member of the insti-  
52 tution's community and presents a continuing threat to the health and  
53 safety of the community, to subject the accused to interim measures in  
54 accordance with applicable collective bargaining agreements, employee  
55 handbooks, and rules and policies of the institution;

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1 h. To obtain reasonable and available interim measures and accommo-  
2 datations that effect a change in academic, housing, employment, transpor-  
3 tation or other applicable arrangements in order to help ensure safety,  
4 prevent retaliation and avoid an ongoing hostile environment, consistent  
5 with the institution's policies and procedures. Both the accused or  
6 respondent and the reporting individual shall, upon request and consist-  
7 ent with the institution's policies and procedures, be afforded a prompt  
8 review, reasonable under the circumstances, of the need for and terms of  
9 any such interim measure and accommodation that directly affects him or  
10 her, and shall be allowed to submit evidence in support of his or her  
11 request.

12 5. Every institution shall ensure that every student be afforded the  
13 following rights:

14 a. The right to request that student conduct charges be filed against  
15 the accused in proceedings governed by this article and the procedures  
16 established by the institution's rules.

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

39 c. Throughout proceedings involving such an accusation of sexual  
40 assault, domestic violence, dating violence, stalking, or sexual activ-  
41 ity that may otherwise violate the institution's code of conduct, the  
42 right:

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

49 ii. To a prompt response to any complaint and to have the complaint  
50 investigated and adjudicated in an impartial, timely, and thorough  
51 manner by individuals who receive annual training in conducting investi-  
52 gations of sexual violence, the effects of trauma, impartiality, the  
53 rights of the respondent, including the right to a presumption that the  
54 respondent is "not responsible" until a finding of responsibility is  
55 made pursuant to the provisions of this article and the institution's

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1 policies and procedures, and other issues including, but not limited to  
2 domestic violence, dating violence, stalking or sexual assault.

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

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

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

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

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

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

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

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

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

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

45 6. For crimes of violence, including, but not limited to sexual  
46 violence, defined as crimes that meet the reporting requirements pursu-  
47 ant to the federal Clery Act established in 20 U.S.C.  
48 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the  
49 transcript of students found irresponsible after a conduct process that  
50 they were "suspended after a finding of responsibility for a code of  
51 conduct violation" or "expelled after a finding of responsibility for a  
52 code of conduct violation." For the respondent who withdraws from the  
53 institution while such conduct charges are pending, and declines to  
54 complete the disciplinary process, institutions shall make a notation on  
55 the transcript of such students that they "withdrew with conduct charges  
56 pending." Each institution shall publish a policy on transcript



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1 notations and appeals seeking removal of a transcript notation for a  
2 suspension, provided that such notation shall not be removed prior to  
3 one year after conclusion of the suspension, while notations for expul-  
4 sion shall not be removed. If a finding of responsibility is vacated  
5 for any reason, any such transcript notation shall be removed.

6 7. Institutions that lack appropriate on-campus resources or services  
7 shall, to the extent practicable, enter into memoranda of understanding,  
8 agreements or collaborative partnerships with existing community-based  
9 organizations, including rape-crisis centers and domestic violence shel-  
10 ters and assistance organizations, to refer students for assistance or  
11 make services available to students, including counseling, health,  
12 mental health, victim advocacy, and legal assistance, which may also  
13 include resources and services for the respondent.

14 8. Institutions shall, to the extent practicable, ensure that students  
15 have access to a sexual assault forensic examination by employing the  
16 use of a sexual assault nurse examiner in their campus health center or  
17 entering into memoranda of understanding or agreements with at least one  
18 local health care facility to provide such a service.

19 9. Nothing in this article shall be deemed to diminish the rights of  
20 any member of the institution's community under any applicable collec-  
21 tive bargaining agreement.

22 § 6445. Campus climate assessments. 1. Every institution shall  
23 conduct, no less than every other year, a campus climate assessment to  
24 ascertain general awareness and knowledge of the provisions of this  
25 article, including student experience with and knowledge of reporting  
26 and college adjudicatory processes, which shall be developed using stan-  
27 dard and commonly recognized research methods.

28 2. The assessment shall include questions covering, but not be limited  
29 to, the following:

- 30 a. the Title IX Coordinator's role;  
31 b. campus policies and procedures addressing sexual assault;  
32 c. how and where to report domestic violence, dating violence, stalk-  
33 ing or sexual assault as a victim, survivor or witness;  
34 d. the availability of resources on and off campus, such as coun-  
35 seling, health and academic assistance;  
36 e. the prevalence of victimization and perpetration of domestic  
37 violence, dating violence, stalking, or sexual assault on and off campus  
38 during a set time period;  
39 f. bystander attitudes and behavior;  
40 g. whether reporting individuals disclosed to the institution and/or  
41 law enforcement, experiences with reporting and institution processes,  
42 and reasons why they did or did not report;  
43 h. the general awareness of the difference, if any, between the insti-  
44 tution's policies and the penal law; and  
45 i. general awareness of the definition of affirmative consent.

46 3. Every institution shall take steps to ensure that answers to such  
47 assessments remain anonymous and that no individual is identified.  
48 Institutions shall publish results of the surveys on their website  
49 provided that no personally identifiable information or information  
50 which can reasonably lead a reader to identify an individual shall be  
51 shared.

52 4. Information discovered or produced as a result of complying with  
53 this section shall not be subject to discovery or admitted into evidence  
54 in any federal or state court proceeding or considered for other  
55 purposes in any action for damages brought by a private party against an

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1 institution, unless, in the discretion of the court, any such informa-  
2 tion is deemed to be material to the underlying claim or defense.

3 § 6446. Options for confidential disclosure. 1. In accordance with  
4 this article, every institution shall ensure that reporting individuals  
5 have the following:

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

9 b. Information about counselors and advocates they may contact regard-  
10 ing domestic violence, dating violence, stalking, or sexual assault;

11 c. A plain language explanation of confidentiality which shall, at a  
12 minimum, include the following provision: "Even Institution offices  
13 and employees who cannot guarantee confidentiality will maintain your  
14 privacy to the greatest extent possible. The information you provide to  
15 a non-confidential resource will be relayed only as necessary for the  
16 Title IX Coordinator to investigate and/or seek a resolution.";

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

29 e. Information about public awareness and advocacy events, including  
30 guarantees that if an individual discloses information through a public  
31 awareness event such as candlelight vigils, protests, or other public  
32 event, the institution is not obligated to begin an investigation based  
33 on such information. The institution may use the information provided at  
34 such an event to inform its efforts for additional education and  
35 prevention efforts;

36 f. Information about existing and available methods to anonymously  
37 disclose including, but not limited to information on relevant confiden-  
38 tial hotlines provided by New York state agencies and not-for-profit  
39 entities;

40 g. Information regarding institutional crime reporting including, but  
41 not limited to: reports of certain crimes occurring in specific  
42 geographic locations that shall be included in the institution's annual  
43 security report pursuant to the Clery Act, 20 U.S.C. 1092(f), in an  
44 anonymized manner that identifies neither the specifics of the crime nor  
45 the identity of the reporting individual; that the institution is obli-  
46 gated to issue timely warnings of crimes enumerated in the Clery Act  
47 occurring within relevant geography that represent a serious or contin-  
48 ing threat to students and employees, except in those circumstances  
49 where issuing such a warning may compromise current law enforcement  
50 efforts or when the warning itself could potentially identify the  
51 reporting individual; that a reporting individual shall not be identi-  
52 fied in a timely warning; that the Family Educational Rights and Privacy  
53 Act, 20 U.S.C. 1232g, allows institutions to share information with  
54 parents when i. there is a health or safety emergency, or ii. when the  
55 student is a dependent on either parent's prior year federal income tax  
56 return; and that generally, the institution shall not share information

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1 about a report of domestic violence, dating violence, stalking, or sexu-  
2 al assault with parents without the permission of the reporting individ-  
3 ual.

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

8 3. If the institution determines that an investigation is required, it  
9 shall notify the reporting individuals and take immediate action as  
10 necessary to protect and assist them.

11 4. The institution should seek consent from reporting individuals  
12 prior to conducting an investigation. Declining to consent to an inves-  
13 tigation shall be honored unless the institution determines in good  
14 faith that failure to investigate does not adequately mitigate a poten-  
15 tial risk of harm to the reporting individual or other members of the  
16 community. Honoring such a request may limit the institution's ability  
17 to meaningfully investigate and pursue conduct action against an accused  
18 individual. Factors used to determine whether to honor such a request  
19 include, but are not limited to:

20 a. Whether the accused has a history of violent behavior or is a  
21 repeat offender;

22 b. Whether the incident represents escalation in unlawful conduct on  
23 behalf of the accused from previously noted behavior;

24 c. The increased risk that the accused will commit additional acts of  
25 violence;

26 d. Whether the accused used a weapon or force;

27 e. Whether the reporting individual is a minor; and

28 f. Whether the institution possesses other means to obtain evidence  
29 such as security footage, and whether available information reveals a  
30 pattern of perpetration at a given location or by a particular group.

31 § 6447. Student onboarding and ongoing education. 1. Every institution  
32 shall adopt a comprehensive student onboarding and ongoing education  
33 campaign to educate members of the institution's community about domes-  
34 tic violence, dating violence, stalking, and sexual assault, in compli-  
35 ance with applicable federal laws, including the Clery Act as amended by  
36 the Violence Against Women Act reauthorization of 2013, 20 U.S.C.  
37 1092(f).

38 2. Included in this campaign shall be a requirement that all new  
39 first-year and transfer students shall, during the course of their  
40 onboarding to their respective institution, receive training on the  
41 following topics, using a method and manner appropriate to the institu-  
42 tional culture of each institution:

43 a. The institution prohibits sexual and interpersonal violence and  
44 will offer resources to any victims and survivors of such violence while  
45 taking administrative and conduct action regarding any accused individ-  
46 ual within the jurisdiction of the institution;

47 b. Relevant definitions including, but not limited to, the definitions  
48 of sexual assault, domestic violence, dating violence, stalking, confi-  
49 dentiality, privacy, and consent;

50 c. Policies apply equally to all students regardless of sexual orien-  
51 tation, gender identity, or gender expression;

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

55 e. Awareness of violence, its impact on victims and survivors and  
56 their friends and family, and its long-term impact;

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1 f. Bystander intervention and the importance of taking action to  
2 prevent violence when one can safely do so;

3 g. Risk assessment and reduction including, but not limited to, steps  
4 that potential victims, perpetrators, and bystanders can take to lower  
5 the incidence of violations, which may contain information about the  
6 dangers of drug and alcohol use, including underage drinking and binge  
7 drinking, involuntary consumption of incapacitating drugs and the danger  
8 of mislabeled drugs and alcohol, the importance of communication with  
9 trusted friends and family whether on campus or off campus, and the  
10 availability of institution officials who can answer general or specific  
11 questions about risk reduction; and

12 h. Consequences and sanctions for individuals who commit these crimes  
13 and code of conduct violations.

14 3. Every institution shall train all new students, whether first-year  
15 or transfer, undergraduate, graduate, or professional.

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

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

30 6. Every institution shall require that each student leader and offi-  
31 cer of student organizations recognized by or registered with the insti-  
32 tution, as well as those seeking recognition by the institution,  
33 complete training on domestic violence, dating violence, stalking, or  
34 sexual assault prevention prior to receiving recognition or registra-  
35 tion, and each institution shall require that each student-athlete  
36 complete training on domestic violence, dating violence, stalking, or  
37 sexual assault prevention prior to participating in intercollegiate  
38 athletic competition.

39 7. Every institution must regularly assess programs and policies  
40 established pursuant to this article to determine effectiveness and  
41 relevance for students.

42 § 6448. Privacy in legal challenges. Pursuant to subdivision (i) of  
43 rule three thousand sixteen of the civil practice law and rules, in any  
44 proceeding brought against an institution which seeks to vacate or modi-  
45 fy a finding that a student was responsible for violating an insti-  
46 tution's rules regarding a violation covered by this article, the name  
47 and identifying biographical information of any student shall be  
48 presumptively confidential and shall not be included in the pleadings  
49 and other papers from such proceeding absent a waiver or cause shown as  
50 determined by the court. Such witnesses shall be identified only as  
51 numbered witnesses. If such a name or identifying biographical informa-  
52 tion appears in a pleading or paper filed in such a proceeding, the  
53 court, absent such a waiver or cause shown, shall direct the clerk of  
54 the court to redact such name and identifying biographical information  
55 and so advise the parties.

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1     § 6449. Reporting aggregate data to the department. 1. Institutions  
2     shall annually report to the department the following information about  
3     reports of domestic violence, dating violence, stalking and sexual  
4     assault:

5     a. The number of such incidents that were reported to the Title IX  
6     Coordinator.

7     b. Of those incidents in paragraph a of this subdivision, the number  
8     of reporting individuals who sought the institution's judicial or  
9     conduct process.

10    c. Of those reporting individuals in paragraph b of this subdivision,  
11    the number of cases processed through the institution's judicial or  
12    conduct process.

13    d. Of those cases in paragraph c of this subdivision, the number of  
14    respondents who were found responsible through the institution's judi-  
15    cial or conduct process.

16    e. Of those cases in paragraph c of this subdivision, the number of  
17    respondents who were found not responsible through the institution's  
18    judicial or conduct process.

19    f. A description of the final sanctions imposed by the institution for  
20    each incident for which a respondent was found responsible, as provided  
21    in paragraph d of this subdivision, through the institution's judicial  
22    or conduct process.

23    g. The number of cases in the institution's judicial or conduct proc-  
24    ess that were closed prior to a final determination after the respondent  
25    withdrew from the institution and declined to complete the disciplinary  
26    process.

27    h. The number of cases in the institution's judicial or conduct proc-  
28    ess that were closed because the complaint was withdrawn by the report-  
29    ing individual prior to a final determination.

30    2. The department shall create a reporting mechanism for institutions  
31    to efficiently and uniformly provide the information outlined in subdivi-  
32    vision one of this section.

33    3. The department shall not release the information, as provided for  
34    in this section, if it would compromise the confidentiality of reporting  
35    individuals or any other party in the best judgment of the department.

36    4. Within one year of the effective date of this article, the depart-  
37    ment shall issue regulations in consultation with representatives from  
38    the state university of New York, city university of New York, and  
39    private and independent colleges and universities, and within two years  
40    of the effective date of this article the department shall issue a  
41    report to the governor, the temporary president of the senate, the  
42    speaker of the assembly and the chairs of the higher education commit-  
43    tees in each house regarding the data collected pursuant to this  
44    section.

45    § 2. Rule 3016 of the civil practice law and rules is amended by  
46    adding a new subdivision (i) to read as follows:

47    (i) Privacy of name in certain legal challenges to college/university  
48    disciplinary findings. In any proceeding brought against a college or  
49    university that is chartered by the regents or incorporated by special  
50    act of the legislature, which proceeding seeks to vacate or modify a  
51    finding that a student was responsible for a violation of college or  
52    university rules regarding a violation covered by article one hundred  
53    twenty-nine-B of the education law, the name and identifying biograph-  
54    ical information of any student shall be presumptively confidential and  
55    shall not be included in the pleadings and other papers from such  
56    proceeding absent a waiver or cause shown as determined by the court.



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1 Such witnesses shall be identified only as numbered witnesses. If such a  
2 name or identifying biographical information appears in a pleading or  
3 paper filed in such a proceeding, the court, absent such a waiver or  
4 cause shown, shall direct the clerk of the court to redact such name and  
5 identifying biographical information and so advise the parties.

6 § 3. The executive law is amended by adding a new section 232 to read  
7 as follows:

8 § 232. Sexual assault victims unit. There is hereby established within  
9 the division of state police the sexual assault victims unit, which  
10 shall be a specialized unit having advanced training in responding to  
11 sexual assaults, including campus sexual assaults, and related crimes.  
12 The sexual assault victims unit shall perform such tasks as determined  
13 by the superintendent, which shall include but not be limited to provid-  
14 ing assistance, including forensic support services, to campus police or  
15 local police or sheriff's departments, and providing training to college  
16 campus communities.

17 § 4. The sum of four million five hundred thousand dollars  
18 (\$4,500,000) is hereby appropriated to the division of state police out  
19 of any moneys in the state treasury in the general fund to the credit of  
20 the state purposes account, not otherwise appropriated, and made imme-  
21 diately available, for the purpose of carrying out the provisions of  
22 section 232 of the executive law as added by section three of this act.  
23 Such moneys shall be payable on the audit and warrant of the comptroller  
24 on vouchers certified or approved by the director of the budget as  
25 submitted by the superintendent of state police in the manner prescribed  
26 by law.

27 § 5. The sum of four million five hundred thousand dollars  
28 (\$4,500,000) is hereby appropriated to miscellaneous aid to localities  
29 out of any moneys in the state treasury in the general fund to the cred-  
30 it of the local assistance account, not otherwise appropriated, and made  
31 immediately available, for services and expenses of rape crisis centers,  
32 including but not limited to prevention, education and victim services  
33 on college campuses in the state. Notwithstanding any law to the contra-  
34 ry, the office of victim services and the department of health shall  
35 administer the program and allocate funds pursuant to a plan approved by  
36 the director of the budget. Such allocation methodology shall be based  
37 in part on the following factors: certification status, number of  
38 programs, and regional diversity. Funds hereby appropriated may be  
39 transferred or suballocated to any state department or agency. Such  
40 moneys shall be payable on the audit and warrant of the comptroller on  
41 vouchers certified or approved by the director of the budget in the  
42 manner prescribed by law.

43 § 6. The sum of one million dollars (\$1,000,000) is hereby appropri-  
44 ated to miscellaneous aid to localities out of any moneys in the state  
45 treasury in the general fund to the credit of the local assistance  
46 account, not otherwise appropriated, and made immediately available, for  
47 services and expenses of college campuses for training and other  
48 expenses related to implementation of article 129-b of the education  
49 law, pursuant to a plan administered and approved by the director of the  
50 budget. Funds hereby appropriated may be transferred or suballocated to  
51 any state department or agency. Such moneys shall be payable on the  
52 audit and warrant of the comptroller on vouchers certified or approved  
53 by the director of the budget in the manner prescribed by law.

54 § 7. This act shall take effect immediately; provided that sections  
55 one, two and three of this act shall take effect on the ninetieth day  
56 after it shall have become a law, provided, however, that sections 6445

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1 and 6449 of article 129-B of the education law, as added by section one  
2 of this act, shall take effect one year after it shall have become law.