

## **Complying with Education Law Article 129-B New York State Education**

### **I- Introduction:**

This guidance document is joint guidance of the State Education Department and the New York State Office of Campus Safety. It is intended to assist colleges and universities in complying with Education Law Article 129-B, as added by Chapter 76 of the Laws of 2015, relating to the establishment of sexual assault, dating violence, domestic violence and stalking prevention and response policies and procedures. Article 129-B includes §§ 6439-6449 of the Education Law.

### **II- History of the Legislation:**

Governor Andrew Cuomo introduced comprehensive sexual assault prevention legislation as part of the 2015 Executive Budget. Final legislation was passed unanimously in the Senate (S.5965, sponsored by Senator LaValle) and 138-4 in the Assembly (A.8244, sponsored by Assemblymember Glick) on June 17, 2015. On July 7, 2015, Governor Cuomo signed the bill into law as Chapter 76 of the Laws of 2015.

Article 129-B (except for the provisions regarding Climate Surveys [Education Law §6445] and Reporting Aggregate Data to the Department [Education Law §6449]) became effective October 5, 2015. The Climate Survey and Aggregate Data sections take effect in July 2016 with the provisions applying for the 2016-2017 academic year.

### **III- Rulemaking:**

The State Education Department (SED) is required by Education Law §6449(4) to adopt regulations by July 2017 relating to the reporting of aggregate data, in consultation with representatives of SUNY, CUNY, and the private and independent colleges.

### **IV- Compliance:**

Each institution is required by Education Law §6440(1) to adopt written rules implementing this article by amending its code of conduct or other comparable policies. A copy of these rules and policies must be filed with SED on or before July 1, 2016. Updated policies must be filed at least every 10 years, except that the second filing shall coincide with the required filing of a certificate of compliance under Article 129-A of the Education Law, and continue on the same cycle thereafter.

Institutions must also file a certificate of compliance with the provisions of this article with SED on July 1, 2016. If an institution fails to file a certificate of compliance on or before September 1, 2016, and annually thereafter, the institution will be ineligible for any State aid or assistance until the certificate is filed.

SED will conduct random audits, at any time after September 1, 2016 to ensure compliance with the provisions of this article.

#### **V- Provisions and Guidance:**

For ease of reference, the following sections appear in the order of the provisions in the legislation. *Text from the legislation is in italics*, and guidance is in regular text.

Where the legislation places text in quotes, it must be adopted using that language. Other than quoted passages, the legislation requires conceptual elements, but does not require any specific word or sentence. Institutions that use slightly different words for covered concepts with the same substantive meaning may use the term consistent with their other policies, even in quoted sentences. For instance, if an institution refers to permanent removal of a student as “dismissal,” in current policies or guidance, it need not change that to “expulsion” to comply with the legislative requirement of a transcript notation for cases of expulsion but can say “dismissed” in the notation instead.

The law requires that each concept be included in policy, but does not require that the elements be in any specific order. While a college may have a single policy incorporating all elements within the code of conduct, it may also take each paragraph and incorporate it into the section of the code of conduct where it is most relevant, so students do not have to hunt around in different sections and cross-compare in order to make sense of the policies. Or, an institution may have both, provided that they are consistent.

#### **Definitions (Section 6439):**

*As used in this article, the following terms have the following meanings:*

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

The legislation defines institution to mean any college or university chartered by the Regents or incorporated by special act of the legislature that maintains a campus. This is precisely the same definition as in Education Law 129-A, and any institutions that have traditionally been covered by that law are also covered by 129-B.

2. *“Title IX Coordinator” shall mean the Title IX Coordinator and/or his or her designee or designees.*

This is important for those requirements the legislation assigns to the Title IX Coordinator. Institutions may allow a Title IX Coordinator to delegate those roles to other individuals. Note that such designee is not required by the law to be denoted a “Deputy Title IX Coordinator” and there is no requirement that all obligations be designated to the same person or group of people. Institutions should use good faith to designate personnel best able to complete the requirements. This is consistent with current federal law and guidance on the role of the Title IX Coordinator.

3. *“Bystander” shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.*

Under the definitions in the statute, a bystander is an individual who witnesses or learns of violence or impending violence, but is not directly impacted as a victim or survivor of this violence. They do not have equivalent rights under federal or state law as a “reporting individual” (victim) who is directly impacted by the violence.

A bystander does not become a “reporting individual” when they bring forth a report. They remain a bystander.

4. *“Code of conduct” shall mean the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.*

Code of conduct is intended to reference the document or documents that an institution uses to govern student behavior. This does not require that each institution use the name “Code of Conduct.” Some institutions refer to this as an “Honor Code” or “Judicial Code” or a number of other names. Whatever name is used by the institution, where the legislation uses code of conduct, it is referencing that document.

Note that the definition of Code of Conduct in 129-B may differ from the definition of Code of Conduct in 129-A.

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

6. *“Privacy” may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate institution officials. Institutions may substitute another relevant term having the same meaning, as appropriate to the policies of the institution.*

Confidentiality is a defined term under the statute, and the obligation to keep information in confidence is inherent for certain professionals on campus, such as health care providers, licensed social workers, licensed psychologists and pastoral and professional counselors (including licensed mental health counselors). Many off-campus resources such as rape crisis centers are also confidential, and with the exception of certain child abuse and imminent threats, individuals working in such organizations have no obligation to report information back to the reporting individual’s campus.

Most employees at an institution are required to report known incidents of sexual assault, or other crimes, so they are not confidential resources. Still, most college employees can offer “privacy.” Privacy is the default. It means that an employee may have to share information pursuant to federal or state law or college policy with certain other college employees, but they will not share the private information beyond what is required or needed to comply with law and policy, and will otherwise limit redisclosure as much as possible. They may not however, offer true confidentiality. Each institution should determine which employees may offer true confidentiality as opposed to privacy.

7. *“Accused” shall mean a person accused of a violation who has not yet entered an institution’s judicial or conduct process.*

8. *“Respondent” shall mean a person accused of a violation who has entered an institution’s judicial or conduct process.*

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

Institutions may use different words to describe the various roles in the campus conduct or complaint process. These definitions are included to ensure an understanding of the stated rights for the parties that are provided within the legislation. The legislation does not require that each college use this nomenclature, it merely states that, whatever the institution calls the people who meet these definitions, these are the rights and responsibilities that apply to those individuals. The term reporting individual is limited in the statute to those directly impacted by the violation

as victims. A bystander to a violation, or a third party who reports information about a violation that they have learned from a victim, is not themselves a reporting individual.

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

In order to determine when affirmative consent is required prior to sexual activity, this legislation first defines “sexual activity.” Rather than developing a new definition, the legislation refers to a current definition used by the federal government. 18 U.S.C. 2246(2)-(3) states that:

“(2) the term “sexual act” means—

- A. contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
- B. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- C. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- D. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(3) the term “sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.”

Individuals must obtain affirmative consent prior to engaging in any of the activity referenced above.

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

To assist colleges in preventing and responding to domestic violence, dating violence, sexual assault and stalking, the legislation makes reference to the Clery Act<sup>1</sup> provisions of the Higher

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<sup>1</sup> All references to the Clery Act in this guidance reflect the law as most recently amended by the 2013 Reauthorization of the Violence Against Women Act.

Education Act, as amended by the Violence Against Women Act. The relevant definitions appear at pages 62784 and 62789-62790 of the Violence Against Women Act Final Rule, 34 C.F.R. § 668.46, available at <http://www.gpo.gov/fdsys/pkg/FR-2014-10-20/pdf/2014-24284.pdf>.

**General Provisions (Section 6440):**

*1. Every institution shall:*

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

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

SED will prepare and distribute a certificate for this purpose, similar to the form provided by SED under Article 129-A.

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

These provisions are meant to be aligned with the requirements of 129-A. The change to coordinate the second filing with the 129-A filing was made to cut down on the burden for institutions, rather than having institutions file forms in separate decennial cycles. SED will develop a process for institutions to submit copies of their written rules and policies to SED electronically.

*2. All institutional services and protections afforded to reporting individuals under this article shall be available to all students and applicable to conduct that has a reasonable connection to that institution. When such conduct involves students or employees from two or more institutions, such institutions may work collaboratively to address the conduct provided that such collaboration complies with the Family Educational Rights and Privacy Act codified at 20 U.S.C. 1232g; 34 C.F.R. Part 99.*

Education Law 129-B is not limited by the geographic reporting categories of the Clery Act. The rights and responsibilities of the law apply based on identity of the reporting individual and/or accused/respondent, not based on the geographic location of the violation.

FERPA has waiver provisions that allow institutions to share the records of students participating in joint programs, and, in certain cases, allow record sharing with third parties. This legislation encourages such sharing, within the bounds of federal and state law, to assist each institution with its compliance with this law, as well as relevant federal laws including Title IX and the Clery Act.

*3. If an institution fails to file a certificate of compliance on or before September first beginning in two thousand sixteen, such institution shall be ineligible to receive state aid or assistance until it files such a certificate. The department shall conduct audits of institutions by random selection, at any time after September first, two thousand sixteen, to ensure compliance with the provisions of this article, and shall post information and statistics regarding compliance with this article on the department's website.*

This section describes audits by SED and potential penalties for non-compliance. As stated later in the description of subdivision 9, there shall be no new private right of action.

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

Institutions must provide a copy of the rules and policies required by the legislation to each student “using a method and manner appropriate to its institutional culture.” This provides significant flexibility to institutions who should use good faith to provide these policies in a manner aimed to educate, not to check a compliance box. The policies can be compiled together or placed in the appropriate sections of the code of conduct and must be available on the institution's website.

*5. The protections in this article apply regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.*

The law is clear that membership in any protected class does not reduce one's protections under this law. These categories are intended to match current federal and New York State discrimination law protected categories.

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

Education Law 129-B is not limited in any way by the geographic reporting categories of the Clery Act. The rights and responsibilities of Article 129-B law apply based on identity of the reporting individual and/or accused/respondent, not based on the geographic location of the violation.

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

A list of resources at the end of this guidance document may assist institutions in drafting policies.<sup>2</sup>

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

This subdivision is to make clear that 129-B is distinct from criminal justice process, and vice versa. The processes have different purposes and use different standards and methods.

A team of attorneys from public and private colleges developed a resource to assist colleges in complying with the requirement to educate reporting individuals about the differences in the criminal and conduct process. The resource may be accessed in Word or PDF format at this site: <http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/><sup>3</sup>

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

This is the equivalent to a provision in the Clery Act.

*10. Nothing in this article shall be construed to prevent an institution from continuing an investigation when required by law to continue such investigation.*

This paragraph is in place to acknowledge the separate and independent responsibility of colleges and universities to investigate violations when required by law, regardless of whether a

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<sup>2</sup> Please note that the list resources attached to this document have not been reviewed and/or endorsed by SED and are provided solely as resources developed by other attorneys and/or institutions to assist higher education institutions in developing their own policies and procedures to comply with this new law.

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reporting individual or any other witness chooses to participate in the institution's process and regardless of a decision within the criminal justice process whether or not to proceed investigate.

**Affirmative Consent to Sexual Activity (Section 6441):**

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

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

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

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

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

*d. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.*

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

*f. When consent is withdrawn or can no longer be given, sexual activity must stop.*

The provisions in the first paragraph must be included verbatim in each code of conduct. The provisions in the second paragraph must be included conceptually in each code of conduct, but they do not have to be included verbatim (institutions may include them verbatim).

Consent must be knowing, voluntary and mutual.

Voluntary consent means that consent under coercion such as a threat of violence is not consent. Mutual means that all parties must consent.

There is no requirement under the definition of consent that there be “verbal” consent or a specific statement of yes. To require a verbal statement would be to exclude hearing and speaking impaired students from consenting to sexual activity. Consent can be given through words or actions so long as the word or action is clear regarding willingness to engage in the sexual activity. The legislation says that silence “in and of itself” is not consent; a reporting individual failing to say no or actively resist is not a defense to a charge of sexual activity without consent. Please be advised that this is a departure from New York State Penal Law relating to criminal charges.

It is common for individuals to engage in multiple sexual acts or sexual contacts during a brief time period (See §6430(10) above for definitions of activity included in sexual act and sexual contact). Whether through words or actions that clearly display consent, each party must affirmatively consent to participating in each sexual act or sexual contact. Consenting to one type of sexual act or contact is not blanket consent to any and all types of sexual contacts. Mutual consent is required for each and may be withdrawn at any time by either party. When consent is withdrawn, the activity must stop. The phrase “[w]hen consent...can no longer be given” refers to a party to a sexual act or sexual contact who initially consents to the activity but during the course of the activity falls asleep or otherwise becomes unconscious or incapacitated. At that point, the other party must stop the sexual activity or contact, and stopping at the point that consent is withdrawn or can no longer be given, can be asserted as a defense to a charge of sexual activity or contact without consent.

Pursuant to paragraph (2)(b), being intoxicated is not a license to engage in sexual activity with another person without their consent. Students who are charged in student judicial or conduct process with initiating sexual activity or contact without the consent of another party cannot use as a defense that they themselves were under the influence of drugs and/or alcohol at the time they committed the violation.

Individuals who are incapacitated cannot consent to sexual activity or contact. Incapacitation is to be determined by a student conduct or investigation process based on available evidence, acknowledging that in almost no cases will scientific evidence of alcohol or drug level (such as a breathalyzer taken at the time of the assault) be available. There is no single standard or number of drinks that leads to incapacitation. This level varies for different people, and may depend in part on their age, gender, height, weight, metabolism and whether and how much they have recently eaten. This provision does not mean that individuals cannot affirmatively consent to

sexual activity or contact when they have been drinking or using drugs. Such individuals may still affirmatively consent through words or actions that clearly indicate interest in engaging in the activity.

Someone who is unconscious, asleep, or involuntarily restrained cannot consent to sexual activity.

Minors who cannot consent under New York's laws covering age of consent are considered incapacitated for purposes of §6441(2)(d) (See New York Penal Law Article 130 et seq.).

Whether all parties consented to sexual activity or contact is to be determined through the student conduct or grievance process. Per Section 6444(5)(c)(ii) below, respondents have a "right to a presumption that the respondent is 'not responsible' until a finding of responsibility is made pursuant to the provisions of this article." This means that the burden of showing that a student had sexual activity or contact with another without affirmative consent as defined here is on the institution, not on the respondent to prove a negative. Note that the burden is on the institution to develop these facts, not on the reporting individual, who may participate at the level to which he or she is comfortable. Through the process, appropriate officials may listen to witnesses and review available evidence to make a determination, to the best of their ability, whether it is more likely than not that a policy violation occurred.

**Policy for Alcohol and/or Drug Use Amnesty (Section 6442):**

*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, 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, or sexual assault to institution 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, 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, or sexual assault."*

*2. Nothing in this section shall be construed to limit an institution's ability to provide amnesty in additional circumstances.*

The legislation contains provisions that provide amnesty to students reporting incidents under this Article from internal institutional violations for drug or alcohol use. This subdivision does not require amnesty for drug dealers or those who use drugs or alcohol as a weapon or to facilitate assault. It covers personal drug use and possession whether intentional or accidental.

The point of this subdivision is to remove the fear of those who have, legally or illegally, been using or in the presence of drugs or alcohol at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault, that the college would take conduct action related to the use of drugs or alcohol rather than action on the sexual or interpersonal violence

Note that this provision only covers the student disciplinary process. The legislation does not cover the criminal justice process (but see New York State Good Samaritan Law, Penal Law §220.78), does not cover areas outside of conduct, and does not apply to employees of the institution. Note that many higher education institutions operate clinical or residency placements where the prohibition on drug and alcohol use in the workplace is governed by federal or state law or regulation, national standards or accreditation requirements. For example, if a student reports being sexually assaulted in a hospital residency placement while under the influence of prescription drugs stolen from the hospital pharmacy, this section would not prevent the student from being removed from the placement or from having restrictions placed on participation in the placement. The student would have amnesty from student judicial or conduct charges for that prescription drug use.

This section does not limit a college from seeking assistance for a student who is struggling with drug or alcohol addiction or is otherwise in danger provided that the assistance is not disciplinary in nature.

“Occurring at or near the time of the commission” is not defined in the law, and should be implemented reasonably and in good faith by institutions.

### **Students’ Bill of Rights (Section 6443):**

*Every institution shall adopt and implement the following “Students’ Bill of Rights” as part of its code of conduct which shall be distributed annually to students, made available on each institution’s website, posted in campus residence halls and campus centers, and shall include links or information to file a report and seek a response, pursuant to section sixty-four hundred forty-four of this article, and the options for confidential disclosure pursuant to section sixty-four hundred forty-six of this article: “All students have the right to: 1. Make a report to local law enforcement and/or state police; 2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously; 3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal*

*justice process free from pressure by the institution; 4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard; 5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available; 6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations; 7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident; 8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution; 9. Access to at least one level of appeal of a determination; 10. 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; and 11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.”*

The student bill of rights is intended to be a brief but overarching document to set the expectations for students. Specific requirements appear in the sections below. This section is aimed at educating students as to their rights under this legislation. The law requires that the bill of rights be widely distributed but gives options to institutions as to how to distribute it in a way that maximizes dissemination to as many students as possible. While all concepts must be included, institutions may present them in a different order, split or re-combine them (such as in training documents or social media) and make minor, non-substantive changes for readability, understandability or consistency. Posted documents should include URL links, shortened URL's, QR codes, or other methods of informing students of the availability and location of other relevant policies required by the law.

Subdivisions 1 and 2 speak for themselves.

For Subdivision 3, the Clery Act, 20 U.S.C § 1092(f)(8) (B)(iii)(III)(aa)-(cc), requires institutions to provide students with three options:

- “(aa) notify proper law enforcement authorities, including on-campus and local police;
- (bb) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
- (cc) decline to notify such authorities.”

This subdivision of the Bill of Rights means that institutions must be neutral in providing these options and neither encourage or discourage students from choosing a specific option. While institutions should advise potential reporting individuals about the pros and cons of specific options, reporting individuals should control their own decision-making.

Subdivision 4 is consistent with the Clery Act and is further expanded upon in Section 6444.

Subdivision 5 is consistent with federal law and requires institutions to provide reporting individuals access to medical and counseling resources, where available. While encouraged, there is no requirement to create resources not currently available. Resources may also be available in the community or through statewide or national organizations.

Subdivision 6 relates to the investigative process involving student reporting individuals. A number of reporting individuals have historically reported that, upon reporting sexual or interpersonal violence, the first responder questions them about their dress, actions, or fault in the incident. This is not appropriate. Consistent with best practices adopted by national law enforcement organizations and practiced by many in higher education, those working with reporting individuals should use trauma-informed questioning tactics which stick to the violative behavior, and do not question whether a reporting individual is partly at fault due to their decisions about dress, attendance, or use of alcohol or drugs. This does not mean, however, that an institution is prohibited from investigating significant inconsistencies that could be evidence of a false or partially false report. Institutions must take the approach of accepting complaints from reporting individuals and treating those individuals with respect and dignity. Officials trained in the neurobiology of trauma will understand that slight deviations in recounting a situation are typical, but a full and fair investigation includes exploring inconsistencies. This is consistent with Section 6444(5)(c)(ii) regarding burden of proof requirements that provide the right to have a *“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,”* and guarantees the rights of a 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.”* While institutions must not sanction and assign responsibility without establishing the elements of a violation, so too, they should approach reporting individuals in a fair and open way, informed by the effects of trauma on reporters.

Subdivision 7 is an important provision to protect students from having to unnecessarily repeat their description of what occurred such that eventually, exhausted, they withdraw from the process. The subdivision says “as few as practicable” not “as few as possible.” This means that an institution may still have a student repeat a story for legitimate reasons, which may include repeated stories prior to student conduct charges, a Title IX investigation, interviews with law enforcement, etc. An example where a student should not be asked to repeat a description would occur where a student reports to a Title IX Coordinator that they were assaulted by a student who lives across the hall from their residence hall room and is in their biology lab. In such a case, the reporting individual should not have to repeat the entire description to the hall director, residence

life leadership, their biology professor and/or the academic affairs office. Rather, the Title IX Coordinator should be empowered to contact each required office/individual on the reporting individual's behalf, to arrange for the appropriate accommodations.

Subdivision 8 is a brief description of the retaliation provisions required by the Clery Act and referenced by the Office for Civil Rights in Dear Colleague letters. While an institution cannot prevent all retaliation, it should prohibit retaliation and act within its abilities to take action, where retaliation is found to have occurred by someone within the institution's jurisdiction.

Subdivision 9 is further expanded upon in Section 6444.

Subdivision 10 allows a student to be accompanied by an advisor of choice to assist and advise the reporting individual, consistent with the Clery Act, and is further expanded upon in Section 6444.

Sentence 11 is intended to educate students that an institution shall not make them choose between their religion and participating in the process. For instance, an institution shall not tell an Orthodox Jewish student that the hearing will be held on Friday at 7:00 p.m. or tell a Muslim student that the only time the Title IX Coordinator can meet with them is just before sunset during Ramadan (when they have been fasting all day). Additionally, institutions will not force students to undergo medical procedures that they say are forbidden by their religion. Institutions will work with participants to ensure they do not have to choose between participating in the process and practicing their religion.

### **Response to Reports (Section 6444):**

*1. Every institution shall ensure that reporting individuals are advised of their right to:*

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

All reporting individuals have these rights. Institutions shall provide these rights consistent with the provisions of the Clery Act, 20 U.S.C. 1092 (f)(8)(B)(iii)(III)(aa)-(cc) that require institutions to provide students with three options:

- “(aa) notify proper law enforcement authorities, including on-campus and local police;
- (bb) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
- (cc) decline to notify such authorities.”

Institutions that do not have an on campus security option and/or a local law enforcement option shall only include available options; providing a blank space for a resource that does not exist at the school may be confusing to a reader. New York State Police have statewide jurisdiction and are always an option within the State of New York. The State Police have created a special unit dedicated to college and university sexual and interpersonal violence prevention and response.

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

The definition of Title IX Coordinator in this legislation includes the coordinator and his/her designee. Further, the legislation further provides that emergency access can be provided by a Title IX Coordinator or “other appropriate “official” instead of “institution official” since the person who may provide such service does not need to be an official of the institution and may instead be an official of an off campus resource. The law requires that institutions must, at all times, provide emergency access to a Title IX Coordinator (which includes the Coordinator’s designee) or other appropriate official trained in interviewing victims of sexual assault. The law does not contemplate that the college or university must have a contact person or office on site that is available 24/7. Nor does the law require that the emergency access must be provided at all times by an official or employee of the institution. The statute allows institutions to designate appropriate officials at off campus resources for emergency access (see Toolkit information below). Institutions should designate the best person(s) and/or office(s) to provide the information and ensure that policies and procedures make it simple for reporting individuals to connect to the appropriate person.

Institutions may provide information about preserving evidence, sexual assault forensic examinations and the differences between the conduct and criminal justice processes either live or via a website. However, an institution that complies by placing this information on a website shall only be considered to be in compliance if the institution uses good faith to train appropriate officials who are likely to receive a report of sexual or interpersonal violence on the following items: the existence of the website, how to use it to find information, how to access it when approached by a reporting individual, and whether that person is an official who can offer confidentiality or privacy. Further, the website should be easily accessible using a short URL (a rule of thumb for memorability of a URL is to have no more than two “.” or “/” in the name, for



instance “response.campus.edu” or “campus.edu/safety”) or be accessible as a mobile phone application that is free and easily accessed by students. While each institution should determine for itself who qualifies as officials likely to receive a report, some examples include, but are not limited to:

- Title IX Coordinator.
- University Police or Campus Security.
- Student Affairs professionals.
- Resident Assistants and Hall Directors.
- Coaches, trainers and athletic staff.
- Club and organization advisors.
- Counseling professionals and advocates.
- Individuals designated as Campus Security Authorities for Clery Act compliance purposes.
- Individuals designated as Responsible Employees for Title IX compliance purposes.

To assist institutions in developing such resources, including access to a list of available state and community organizations that may serve as options for emergency access officials, the State University of New York prepared a Toolkit to develop a website similar to the SUNY SAVR (Sexual Assault and Violence Response) Resource.

A team of attorneys from public and private colleges developed a resource to assist colleges in complying with the requirement of educating about the different standards of proof and evidence. The resource may be accessed as a Word or PDF at this site: <http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/>.

When the statute references “different standards of proof and evidence” it is speaking primarily to the difference between the criminal requirement of proof beyond a reasonable doubt compared to the standard of preponderance of the evidence commonly utilized in student conduct proceedings, as well as the stringent laws applied in criminal court regarding submission and admissibility of evidence as compared to the college conduct process which is not governed by formal rules of evidence.

*c. Disclose confidentially the incident to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals;*

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

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

*f. File a report of sexual assault, domestic violence, dating violence, 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;*

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

The above paragraphs are a list of options a reporting individual has in reporting the violation. They are not mutually exclusive. A reporting individual may use any or none of these options.

Institutions should only list resources that are actually available to the institution's students.

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

Institutions have flexibility in complying with this provision. Large institutions may have personnel on campus who can assist with understanding the initial requirements to bring a case in family or civil court, while other institutions may refer reporting individuals to legal aid or community resources (institutions may access a list and/or map of legal aid resources in New York State by visiting <http://www.suny.edu/violence-response/>, clicking on "Off Campus Resources" and then sorting for "Legal Resources"). This provision does not require institutions to bring actions on behalf of reporting individuals, provide or pay for attorneys, or provide direct support. The provision merely requires that institutions serve as a resource to students in "initiating" these proceedings. That may include information sheets, links to appropriate resources or assistance from personnel in the institution or outside personnel.

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

A reporting individual may withdraw a complaint or report from the institution at any time, and should not be penalized. The institution may, consistent with other provisions of this law as well as federal law, still have obligations to investigate and/or take actions. Pursuant to this law, reporting individuals may participate as much or as little as they wish.

*2. Every institution shall ensure that, at a minimum, at the first instance of disclosure by a reporting individual to an institution representative, the following information shall be presented*

*to the reporting individual: “You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.”*

Institution representative includes employees likely to receive such a report, who may be student employees. Institutions may not limit this coverage to a single employee, but should act in good faith to provide the information to employees likely to receive such a report or otherwise comply as addressed in the guidance below.

While each institution should determine for itself who qualifies as officials likely to receive a report, some examples include, but are not limited to:

- Title IX Coordinator.
- University Police or Campus Security.
- Student Affairs professionals.
- Resident Assistants and Hall Directors.
- Coaches, trainers and athletic staff.
- Club and organization advisors.
- Counseling professionals and advocates.
- Individuals designated as Campus Security Authorities for Clery Act compliance purposes.
- Individuals designated as Responsible Employees for Title IX compliance purposes.

The important point in this paragraph is for employees to provide this information to students at the first instance of disclosure.

Employees may be instructed to carry this paragraph with them for easy access. Alternatively, institutions may allow employees to access this paragraph via a website, when needed, to then provide or read the information to the reporting individual. However, an institution that complies by placing this information on a website shall only be considered to be in compliance if the institution uses good faith to train appropriate officials who are likely to receive a report of sexual or interpersonal violence on the following items: the existence of the website, how to use it to find this paragraph and other pertinent information on the website, and how to access the paragraph when approached by a reporting individual. Please refer to the guidance under Section 6444(1)(b) above for more information on how to comply by posting this information on a website.

*3. Every institution shall ensure that reporting individuals have information about resources, including intervention, mental health counseling, and medical services, which shall include*

*information on whether such resources are available at no cost or for a fee. Every institution shall also provide information on sexually transmitted infections, sexual assault forensic examinations, and resources available through the New York state office of victim services, established pursuant to section six hundred twenty-two of the executive law.*

Sample language that can serve as a fill-in-the-blank template for institutions can be found in the State University of New York Sexual Violence Response Policy, which is consistent with this section of the law. The language is available for use by public and private institutions. Additional guidance for crime victims may be found at the Office of Victim Services website:

<https://ovs.ny.gov/>.

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

*a. When the accused or respondent is a student, to have the institution issue a “no contact order” consistent with institution policies and procedures, whereby continued intentional contact with the reporting individual would be a violation of institution policy subject to additional conduct charges; if the accused or respondent and a reporting individual observe each other in a public place, it shall be the responsibility of the accused or respondent to leave the area immediately and without directly contacting the reporting individual. Both the accused or respondent and the reporting individual shall, upon request and consistent with institution policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of his or her request. Institutions may establish an appropriate schedule for the accused and respondents to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the reporting individual;*

No contact orders are institutional documents that do not have the legal effect of orders of protection, which are obtained through a court. Although this is the generally accepted term, institutions may refer to such a document by another name, and the provisions in the legislation would apply to such a document.

The law requires that institutions be clear that the responsibility to stay away falls upon the person subject to the no contact order (“covered person”), not the protected individual. A covered person may be a respondent or accused or a third party who is the subject of a no contact order. In certain cases, a reporting individual under this law may be a covered person under a no contact order. If the covered person and protected person are in the same place accidentally, it is incumbent upon the covered person to remove themselves in a reasonable time and manner. They need not run or make a scene out of leaving, but they should leave the location. In

exceptionally rare cases where a protected individual is actively seeking to be in the same place as the covered person, this does not mean that an institution must sanction the covered person or is prohibited from taking other reasonable action to address the situation, consistent with its policies and procedures. The definition of a public place is to be interpreted by institutions using reason and good faith. Some institutions may assist students in compliance by setting up a schedule of attendance in certain locations such as academic buildings, libraries, athletics or fitness facilities and dining halls, but there is no requirement that institutions develop such a schedule.

*Both the accused or respondent and the reporting individual shall, upon request and consistent with institution policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of his or her request.*

As has been generally accepted practice in higher education, covered and protected individuals under no contact orders may request a review of the need for, and terms of, such orders by the institution and may submit information as to their reasoning for requesting a change. Such review shall be prompt, but promptness is determined by the institution in view of the circumstances of the case, personnel availability, complexity of the request, and evidence/information submitted favoring or arguing against a modification. There is no requirement in this provision for a full, in person hearing to review the order.

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

This section reflects the current state of the law and is intended for completeness and student education. Institutions with sworn law enforcement could directly assist in obtaining such an order, or do so in concert with municipal law enforcement, as the situation merits.

Section 2265 of the Violence Against Women Act requires that each state give full faith and credit to orders of protection issued by other states, Indian Tribes, and territories.

18 U.S.C. 2265(a): Full Faith and Credit-

Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.

This means that institutions shall treat the process and award of an out-of-state court document equivalent to a New York State Order of Protection.

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

The intention of this provision is to assist both covered and protected students with understanding a document that may appear complicated or otherwise difficult to understand. If, due to some circumstance, the reporting individual or respondent does not have a copy of the order, they can receive that copy from an institution representative if the institution has a copy.

This requirement may be met by an institution representative or other appropriate official. This means that an institution that lacks on campus resources to assist in this matter may work with a local resource or a neighboring institution where such a resource is available. Local resources may include law enforcement, legal aid organizations, rape crisis centers, and domestic violence prevention organizations (this is not a comprehensive list). Institutions may access a list and/or map of state and local resources in New York State by visiting <http://www.suny.edu/violence-response/> and clicking on “Off Campus Resources” or “View NYS Resources”).

The law requires that institutions be clear that the responsibility to stay away falls upon the covered person, not the protected individual. In the exceptionally rare case that a protected individual is actively seeking to be in the same place as the covered person, this does not mean that an institution must sanction the covered person or is prohibited from taking reasonable action to address the situation, consistent with its policies and procedures.

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

Institutions may wish to call on available law enforcement, whether on-campus or off, to assist in developing language on specific consequences. Note that either a covered or protected person may request assistance and an explanation.

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

As with many provisions of the law, this section does not change the current requirements for arrests for violations of such orders, but instead the law is aimed at educating students about their rights under Orders of Protection.

Each institution should post information about personnel, likely in University Police, Campus Safety, or Student Affairs, who can assist a student in understanding an Order of Protection, and a clear method for contacting that office. To comply with the Clery Act requirement of even-handedness, such explanations should be available both to students who are protected by Orders of Protection and to those who are subject to Orders of Protection.

The language about not limiting current law enforcement jurisdiction is intended to make clear that 129-B does not change current law enforcement jurisdiction.

*f. When the accused or respondent is a student determined to present a continuing threat to the health and safety of the community, to subject the accused or respondent to interim suspension pending the outcome of a judicial or conduct process consistent with this article and the institution's policies and procedures. Both the accused or respondent and the reporting individual shall, upon request and consistent with the institution's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of his or her request;*

Institutions should use good faith and best practices to determine when a person presents a continuing threat to the health and safety of the community. Interim suspensions should be reasonable and tailored to balance the ability of the accused/respondent to complete their studies with the safety of both the reporting individual and/or the institution community at large. This section largely reflects longstanding best practices of public and private institutions.

As has been the generally accepted practice in higher education, covered individuals under suspension may request a review of the need for or terms of such orders by the institution and may submit information as to their reasoning for requesting a change. Institutions must have a procedure by which the accused/respondent or reporting individual can request a review. The review must be prompt. Promptness is determined by the institution in view of the circumstances of the case, personnel availability, complexity of the request, and evidence/information submitted favoring or arguing against a modification of suspension. This provision does not specify that a hearing must be held to determine the request to modify the order, but rather the institution must conduct some review, and it may be short of a hearing. To be consistent with federal law and guidance and the need for equal opportunity, institutions should notify the other party of the request for modification and the decision of whether to modify or not.

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

This provision is a parallel to the provision above that applies to non-student members of an institution community. Consistent with the law collective bargaining agreements, and institution policy, institutions may remove a non-student from the institution community when the person is accused of a violation and presents a danger. Nothing in the law changes collective bargaining agreements or requires changes to other policies.

Individuals who are neither students, nor employees, but are members of the institution community who present a continuing threat, as determined by the institution, would also be subject to interim measures, consistent with institution policy. An example is a persona non grata letter notifying an individual that they are not allowed on institution property and entering property may subject them to arrest or trespassing charges (consistent with applicable law, institutional policy, and due process requirements, where applicable).

*h. To obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation or other applicable arrangements in order to help ensure safety, prevent retaliation and avoid an ongoing hostile environment, consistent with the institution's policies and procedures. Both the accused or respondent and the reporting individual shall, upon request and consistent with the institution's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects him or her, and shall be allowed to submit evidence in support of his or her request.*

This provision should be interpreted in a manner consistent with federal law including but not limited to the Clery Act, and Office for Civil Rights interpretations of Title IX and the Americans with Disabilities Act. Institutions must, under those and this law, provide reasonable accommodations. Reasonability is to be determined on a case-by-case basis and using the standards established in law and by the institution. Not all accommodations must be granted. Institutions should analyze each request to determine if it could improve safety, prevent retaliation, and/or avoid an ongoing hostile environment, and the law is clear that such analysis should be consistent with institutional policy and procedure.

In the event that an accommodation or interim measure (including but not limited to campus or residence hall suspension) granted to or against one party impacts another party (parties in this case being the reporting individual[s] and accused or respondent[s]), both the directly impacted party and the secondarily impacted party may request a review of the terms or totality of the



accommodation and/or measure by the institution and may submit information as to their reasoning for requesting a change. Such review shall be prompt, but promptness is determined by the institution in view of the circumstances of the case, personnel availability, complexity of the request, and evidence/information submitted favoring or arguing against a modification. There is no requirement in this provision for a full, in person hearing on the request to modify the order.

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

In general, these rights apply to all students. Some rights by their nature may be more applicable to reporting individuals or accused/respondents.

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

The law gives students the right to *request* that charges be brought but leaves the decision of whether to actually file charges with the institution. Institutions can initiate charges or choose not to initiate them when evidence does or does not merit doing so, in conformity with this law and the institution's code of conduct and other institution policies. The statutory word "charges" should be read to cover other equivalent terms, including those used to reference information brought through the investigative process, even if a school does not use the specific term "charge" within their process.

*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, 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.*

This section should not be read to extend to private colleges the Constitutional due process requirements that apply to public colleges. It establishes minimum requirements for cases of sexual and interpersonal violence covered by 129-B, but institutions may offer more rights and requirements and may offer such rights and requirements for other violations that are outside the scope of this law.

Consistent with the regulations implementing the Clery Act, 34 C.F.R. §668.46(k)(2)(v), institutions should simultaneously provide both reporting individuals and respondents with notice or notices that include the date, time, location and factual allegations that have been reported, as well as a reference to the specific code provisions reported to have been violated and their associated sanctions. This list should be specific enough to allow a reasonable person to present a defense, pursuant to institutional policy, but need not be so long and detailed that it negatively impacts the student conduct process. The section is consistent with the notice requirements of the Clery Act. Nothing in the paragraph prohibits an institution from holding students accountable for violations that are not referenced in the initial charge letter but are learned about from evidence, testimony, or admission at a hearing or during the investigatory process, consistent with institution policies and due process, where applicable.

Students should receive the notice required by this paragraph, however, and, consistent with the Clery Act, there is no requirement that all provisions of notice be provided within the same notification, or in the first communication to the student. An institution may provide the information required in this paragraph via a number of separate communications, however each communication must be provided to the reporting individual and respondent simultaneously. Institutions may choose to provide limited information initially for policy reasons, and then supplement that information with additional notice(s) as information becomes available or as the institution is able to gauge other factors, such as the respondent's availability and understanding of the charges. The law does not prescribe a medium for providing notice and institutions may use all or some combination of written notice, electronic notice, or oral notice, provided that if an institution uses oral notice, it shall document the date, time, and attendees at any meeting at which oral notice is provided and shall obtain from the student an acknowledgment that such notice was provided.

The "reference to the specific code violation" means that institutions may provide a link or referral to a location in the code that includes relevant page numbers or section numbers, and need not copy and paste the applicable paragraphs (which may be lengthy) into the charging letter or document. Institutions may only make such a reference if their code of conduct is available publicly or on the internet. Recall that the Clery Act requires that institutions publish a list of the available sanctions for violations of institution policy related to sexual assault, domestic violence, dating violence and stalking (institutions must, per the regulations, publish all possible sanctions and not just a range of sanctions). Therefore the requirement in 129-B simply

mandates a reference to these sanction lists which must already be created pursuant to federal law.

Reporting individuals and respondents should be afforded the opportunity to offer evidence during the process. Evidence is not defined in the law and should be defined reasonably by an institution. Institutions are not required by this law to offer hearings, and may use alternative methods, such as the investigatory model, as allowed under the institution's policies and applicable law. The paragraph does not require that evidence be offered during a hearing or that evidence be offered in the presence of other parties or witnesses.

The law does not specify the type of record or manner of access to the record that must be maintained. It can be a recording, notes, a transcript or any other reasonable type of record. There is no requirement in the law that an institution prepare a transcript on demand. Further, the legislation only requires "access" to the record. This means that for most institutions, they are required to continue their practice of giving participants reasonable access during business hours and are specifically not required to provide participants with copies of the record. Institutions may choose to allow licensed court reporters to make transcripts of a hearing or proceeding, at the expense of the participant in the hearing that requests such a transcript, as allowed by the institution's code of conduct. Note that if one participant creates such a recording, the fair treatment provision of the law may require the institution to provide that transcript to the other participant(s) upon request or as a matter of course, as determined by institution policy. Recordings must be maintained for at least five years although institutions may choose to retain them for longer.

Appeals must be considered by a panel—not one person. The panel may include one or more students, but does not have to include students. The law does not specify whether the decision of the panel must be unanimous or may be a majority vote of panelists, and that decision is left to the institution. Further, the law does not state who must, may, or may not be a member of the panel. Individuals who made the initial decision should not be a part of the panel considering an appeal.

The law is to be read as consistent with the Clery Act, Title IX, and other applicable laws; it requires equal access to appeals and requires that the institution provide the parties with simultaneous notice about the outcome. The outcome includes the underlying decision, sanction, and rationales for decision and sanction. Also, institutions must provide notice to the respondent and the reporting individual of both the initial outcome and any change in the outcome due to appeal. If there is no appeal, institutions must provide notice to the parties when the outcome becomes final because the time for an appeal has expired.

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

In general, these rights apply to all students. Some rights by their nature may be more applicable to reporting individuals or accused/respondents.

*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.*

This paragraph parallels the requirements of the Clery Act and requires that institutions allow students to choose an advisor of choice to accompany the student to any hearing or meeting related to the conduct process. Institutions have the discretion to allow more than one advisor, although the law requires that they are permitted at least one. Institutions may, but are not required to, offer a particular advisor at the cost of the school or to pay for an advisor. The advisor is truly of choice; it may be a faculty member, family member, attorney or otherwise. Unless an institution makes an affirmative decision as a matter of policy to reimburse the student for engaging an advisor, any costs associated with the advisor would be at the expense of the student. An institution may provide a list or panel of employees available to offer advice, but may not limit a student to members of such a list or panel.

The requirement is that a student be allowed to have such an advisor accompany them. There is no provision of the law that requires an institution to allow such an advisor to participate in the meetings or hearings, such as making opening or closing statements or questioning witnesses. While an institution may allow such participation, it may also restrict such advisors from speaking at the meeting or hearing. Institutions must allow advisors to reasonably provide assistance and advice to their student principal during the course of such a proceeding, which may be accomplished by allowing for passing of notes, non-verbal cues, or a reasonable number of breaks or recesses. Institutions are not required to allow for attempts to go around these provisions, such as by having attorneys write every word that their student principal reads verbatim, while waiting for the attorney to then finish the next sentence of the script. Institutions may place reasonable restrictions on such actions. Advisors who violate institution policies may be removed from a hearing or meeting. Institutions are not required by this law to recess the hearing or allow the student to replace the banned advisor with a new advisor. Nothing in the law requires an institution to limit its capacity to conduct its judicial or conduct process due to scheduling or other delays (whether genuine or tactical) by an advisor of choice. Institutions may place reasonable restrictions on participation of advisors, such as by having a policy allowing any party to request a five business day delay to allow for the scheduling conflicts of their

advisor of choice, and institutions are not required to comply with the busy schedule of advisors of choice who may declare themselves unavailable for days, weeks or months. This provision is to be read in concert with provisions requiring a timely process (such as the Office for Civil Rights Title IX guidance that requires a process lasting approximately 60 days).

*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 or sexual assault.*

Prompt is not defined in the law and is to be determined on a case-by-case basis, consistent with institution policy and procedures. Institutions should use good faith to conduct investigations and proceedings in a prompt but meaningful way. Consistent with the requirements of the Clery Act, individuals who conduct investigations, hearing and appeals should have annual training in conducting these investigations, the impact of trauma on reporting such violations, the importance of impartiality in these proceedings, and the rights of the respondent (rights of reporting individuals are established here and elsewhere in the law). The provisions of this subparagraph regarding training of those conducting investigations and adjudications are consistent with the requirements of the Clery Act, and are included here for education purposes.

A key provision in this subparagraph is a presumption that one should not be determined in advance to have violated a rule and then required to “prove a negative.” To borrow a phrase from the criminal justice process, one is “innocent until proven guilty.” This law, consistent with that principle, emphasizes that a respondent is presumed to be “not responsible” until the institution has established evidence, testimony or information that would allow the decision maker to find the respondent responsible pursuant to the institution code of conduct and this law. Note that the burden is on the institution to develop these facts, not on the reporting individual, who may participate at the level to which he or she is comfortable. Through the process, appropriate officials may listen to witnesses and review available evidence to make a determination, to the best of their ability, whether it is more likely than not that a policy violation occurred. For example, an institution cannot begin a process with the presumption that a respondent engaged in sex without consent, and then begin to gather evidence wherein the respondent would have to prove there was consent. The institution should gather evidence to determine whether a violation occurred and the burden of such a finding is on the institution.

Institutions should read this provision consistent with a requirement in this same section to have training in, among other things, trauma-informed interviewing and investigations, which lead

with an initial obligation to treat a reporting individual's allegations with respect and seriousness. Institutions are not conducting criminal trials, but are expected to follow their policies and procedures as well as this and other laws to determine the facts, including whether an institution policy was violated, and then determine whether sanctions or other actions are necessary.

*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.*

A conflict of interest is to be interpreted consistent with the provisions in the Clery Act and would cover an investigator or adjudicator who is a family member or close friend or advisor of a party, or who has similar conflicts. Institutions need not entertain claims of conflict of interest that merely stem from the involvement of an investigator or adjudicator who is the same gender, race, etc. of a party.

*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.*

Institutions maintain a responsibility under this law and federal law to investigate and take action in cases of sexual assault, domestic violence, dating violence, and stalking. This obligation is completely separate from a law enforcement duty to investigate whether a person within their jurisdiction violated applicable law and whether or not such a violation merits charges or prosecution. The Clery Act requires that institutions offer reporting individuals the opportunity to report to the college, law enforcement, or not at all. The college's sexual assault policy/procedures and criminal justice process are separate and distinct processes and one does not overcome the other.

This independence requires that institutions not be barred from conducting their disciplinary process due to the proceedings of the criminal justice system, except when temporary delays are requested by law enforcement with proper jurisdiction. Such delays should not be longer than 10 days except where specifically requested and justified by law enforcement. The determination of whether such delays are justified is in the discretion of the institution.

An example of a delay would occur when law enforcement seeks to elicit a confession using a wiretap of a witness or the reporting individual during one or more conversations with the accused. If law enforcement informs the institution that notifying the accused of an investigation or that they will become a respondent in a student conduct process may hamper their ability to obtain useful information from a wiretap, an institution may view this as justification for a temporary delay. Still, such a delay should only be temporary and not open-ended.

Generalized delays due to scheduling, workload, priority of investigation compared to other open cases, are insufficient to meet the requirements of this law that institutions independently investigate and act when receiving these reports, without being impacted in that responsibility by the parallel (but different) requirements and/or actions of law enforcement.

The institution should determine, consistent with its policies and using good faith, who the appropriate institution official is to field requests for a delay, however, the individual assigned should be at a sufficiently high level of authority tasked with important policy decisions. In cases that impact Title IX, the Title IX Coordinator should, if not the decision maker, at a minimum be involved in the decision of whether to delay the institution process.

*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.*

This provision ensures that respondents and reporting individuals will have reasonable access to evidence in the case file that may be used in a hearing or investigation and/or may exonerate or show responsibility in the case, regardless of whether that evidence is held in a file denoted “case file” or held in a parallel file maintained by the institution, to the extent that is applicable. Institutions may still place reasonable restrictions on access to evidence, such as time, place and manner restrictions, heightened restriction for sensitive information that is not directly relevant to the questions raised in the investigation or hearing, and a limit on students or their advisors of choice engaging in “fishing expeditions” of all records maintained by a college that in any way cover any of the parties. This provision is not a generalized discovery mandate. It allows access to evidence directly relevant to the specific case, as reasonably determined by the institution, but the law does not require any type of pre-hearing discovery. The right in the law is to review and present evidence. There is no requirement that parties or their advisors of choice be provided with a copy of the evidence in question.

*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, or sexual assault may be admissible in the disciplinary stage that determines sanction.*

Consistent with due process and/or fundamental fairness (as applicable), this is a right that belongs to the individual and applies equally to respondents and reporting individuals. While a party participating in a conduct proceeding may, if allowed under the policies and procedures of the institution, present evidence of their *own* past sexual history with persons other than the other

party and/or evidence of mental health diagnosis and treatment (or have the institution present such evidence on their behalf), they may likewise prohibit the *other* party from seeking to present testimony or other evidence of the same.

The limit does not cover evidence of prior sexual history with the other party in the judicial or conduct action that is relevant to a charge or defense. For instance, if student Respondent A wants to testify about why A believed that Reporting Individual B was affirmatively consenting to sexual activity, A may testify about past sexual acts between B and A, indicia of consent in those acts (such as certain words or actions said or used in the past between participants to indicate consent which were or were not said or used in this particular sexual contact), and why A believed that consent was also given in the case under consideration. However, A may not introduce directly or seek to have Witness C testify about a past sexual act between Reporting Individual B and Witness C as evidence of same. Reporting Individual B may prohibit such testimony.

Further, if a reporting individual engaged in sexual activity with more than one partner in a short time period (as reasonably determined by the institution) and the institution alleges that the reporting individual sustained injuries during non-consensual sexual activity with the respondent, the fact of consensual or non-consensual sexual activity with the unrelated individual may be admitted for the limited purpose of addressing how injuries were sustained. Such evidence may not be used to show a pattern of engaging in sexual activity by the reporting individual or to allege that if the reporting individual consented to activity with the unrelated individual, ipso facto she or he was consenting to sexual activity with respondent.

The same concepts apply to past mental health diagnosis or treatment and cover both respondents and reporting individuals. A student may testify or offer evidence on their own past mental health diagnosis or treatment but may limit the other party from offering such evidence.

Evidence of past findings of domestic violence, dating violence, stalking, or sexual assault may be admitted but only in the penalty phase of the proceeding. Past findings are not relevant to answering the question of whether there was a violation in this specific instance, and could be found to be prejudicial and to inappropriately shift the burden of proof from the institution to the respondent (See Section 6444(5)(c)(ii) regarding burden of proof requirements). If respondent is found responsible in that part of the proceeding, the subparagraph allows for admittance of evidence about the respondent's past findings of criminal or conduct violations in these areas to assist a decision-maker in determining an appropriate sanction. Past findings are to be interpreted by the institution using good faith and may be limited to past findings made by the institution or may include past findings made by other institutions, the criminal or civil court system, etc.



*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.*

This should be read in a manner consistent with the requirements of the regulations implementing the Clery Act, 34 C.F.R. §668.46(k). All requirements are subject to good faith application and to an institution's policies. The requirement to provide notice of meetings to which a person is required or eligible to attend is specific to that specific person and notice need not be provided to all parties unless *that* party is required or eligible to attend *this* meeting. For instance, in the case of an accusation of stalking, the institution need not notify the accused of a meeting for which the reporting individual is required or eligible to attend unless the accused is also required or eligible to attend that specific meeting

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

This should be read in a manner consistent with the requirements of the Clery Act. Institutions may use different terms to describe the impact statement, and this provision would apply regardless of chosen term. Institutions may place reasonable restrictions on provision of such a statement, such as length.

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

This should be read in a manner consistent with the requirements of the Clery Act, 20 U.S.C §1092(f)(8)(iv)(III)(a) and 34 C.F.R. §668.46(k)(2)(v). There is no requirement in law that notice be provided using paper mail. Institutions may determine the best way of providing such notice in a manner reasonably calculated to be informative and simultaneous (in some cases, paper mail may be the best option). Oral notice does not meet the requirements of this section.

*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.*

This provision should be read in a manner consistent with the requirements of the Clery Act regulations, 34 C.F.R. §668.46(k). The Clery Act requires that institutions publish a list of the available sanctions for violations of institution policy related to sexual assault, domestic

violence, dating violence and stalking (institutions must, per the regulations, publish all possible sanctions and not just a range of sanctions). Therefore the requirement in the law simply mandates providing information about these sanction lists which must be created pursuant to federal law.

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

Institutions may not require that students sign a non-disclosure agreement prior to learning the results of a conduct process in which they participated as a reporting individual or respondent. This is consistent with the Family Educational Rights and Privacy Act (FERPA) (see page 14 of the April 2011 Office for Civil Rights “Dear Colleague Letter,” <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>). This applies to respondents and reporting individuals. Respondents and reporting individuals are not themselves barred by FERPA from sharing this information. Note, however, that this does not allow students to unreasonably share private information in a manner intended to harm or embarrass another individual, or in a manner that would recklessly do so regardless of intention. Such sharing may be retaliation which can result in separate charges under the code of conduct.

*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.*

This section is consistent with the Family Educational Rights and Privacy Act (FERPA). Institutions may not share the information obtained during the course of the disciplinary process until final determination, unless compelled to do so, such as by receipt of a lawfully issued subpoena. Institutions may still share information about the proceeding with “school officials” with a “legitimate educational interest” consistent with FERPA. More information on the requirements of the various federal laws in this area can be found in the chart “Notifications Following Student Conduct Hearings.”

*6. For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they “withdrew with conduct charges pending.” Each institution shall publish a policy on transcript notations and appeals seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to*

*one year after conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.*

This provision requires all institutions to place notations on transcripts of students when two factors are met:

- The student is found responsible, after a process (or takes responsibility) for a code of conduct violation that is equivalent to the definitions for Clery Act Part I Primary Crimes; and
- The student is expelled, suspended, and/or withdraws with conduct charges pending.

Institutions may (but are not required to) place notations on transcripts for other violations, but must at a minimum place notations when the two factors above are met.

The specific language of the transcript notation is established in Education Law §6444(6). The required notation is general to a violation of the code of conduct and does not list the specific violations for which a student is found responsible. Notations must appear on the actual transcript, and may not be issued on a separate, detachable paper.

Education Law §6444(6) uses the definitions of the Clery Act solely for the purpose of identifying relevant code of conduct violations that must be noted on a student's transcript. Violations do not have to be Clery Act reportable in order for a transcript notation to be issued. Section 6440(6) states that the law "shall apply regardless of whether the violation occurs on campus, off campus, or while studying abroad" so actual Clery Act reportability of an incident is not relevant to the question of whether a transcript notation of a violation must be utilized. All students who take responsibility or are found responsible after a code of conduct process for a code of conduct violation whose definition is equivalent to a Clery Part I Primary Crime, or who withdraw with conduct charges pending, must have such a notation on their transcript regardless of where or when the violation occurred.

Violations equivalent to crimes of violence, as defined in the Clery Act (as updated by the Violence Against Women Act Final Regulations) Part I crimes, as set forth in 34 C.F.R. §668.46(c), that require a transcript notation under §6444(6) are: murder; manslaughter; rape, fondling, incest and statutory rape; robbery; aggravated assault; burglary; motor vehicle theft; and arson. Institutions may, but are not required to, include transcript notations for additional violations. The relevant definitions defined in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting and set forth as Appendix A to Subpart D of Part 668, the Final Regulations to implement the Violence Against Women Act Amendments to the Clery Act in the Federal Register, Vol. 79, No. 202, October 20, 2014 at pages 62,789-62,790 are:

- **Criminal Homicide**—Manslaughter by Negligence: The killing of another person through gross negligence.
- **Criminal Homicide**—Murder and Nonnegligent Manslaughter: The willful (nonnegligent) killing of one human being by another.
- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.
- **Robbery:** The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.
- **Aggravated Assault:** An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)
- **Burglary:** The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.
- **Motor Vehicle Theft:** The theft or attempted theft of a motor vehicle.
- **Arson:** Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Note that these definitions are not completely consistent with New York State Penal Law. The law does not forbid institutions from admitting a transfer student with a transcript notation, nor does it forbid employers from employing a person with a transcript notation. In general, colleges can develop policies that govern how admissions staff will weigh a notation and whether or if they will require additional information from the applicant. Additionally, licensure organizations may develop policies that allow them to request additional information when an

applicant presents a transcript with a notation, but the law does not mandate such policies, nor does it forbid licenses for individuals with a transcript notation.

If a court of competent jurisdiction vacates a finding of responsibility for a violation of college policy, the legislation requires that vacating an underlying finding also vacates the transcript notation memorializing that finding. This provision applies to vacating of the finding by an external entity, and is separate from the policy on transcript notations and appeals in this section that governs the process internal to the institution for removing or modifying a notation.

Institutions may, but are not required to, establish a policy for appealing a notation of suspension, including standards for lifting a notation and who such an appeal should be addressed to, provided that such notation may not be lifted until one year after the suspension ends. A notation for expulsion may not be removed via an appeal to the institution.

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

This provision encourages such memoranda of understanding “to the extent practicable” and does not require such an agreement or demand any specific provisions be in such an agreement.

The State University of New York, Department of Health, and New York State Coalition Against Sexual Assault developed a model agreement that can be implemented by private and public colleges and their community partners.

Nothing in this law requires or obligates institutions to pay a community organization or provider a fee or other consideration in exchange for signing a memorandum of understanding.

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

Local health care facilities that provide sexual assault nurse examination services are required by law (including the Violence Against Women Act, codified at 42 U.S.C.A. § 3796gg-4; and N.Y. Exec. L. § 631(13)) to provide these examinations to college students and are barred from charging for the specific cost of the exam. The intent is for institutions to work collaboratively

with community partners and health care providers to provide the best service to victims and survivors of violence, and to that end, institutions and local health care facilities are strongly encouraged to develop partnerships that go beyond the minimum required by law. To the extent additional agreements are reached, they can be memorialized in a memorandum of understanding. Nothing in this law requires or obligates institutions to pay a community organization or health care provider a fee or other consideration in exchange for signing a memorandum of understanding.

*9. Nothing in this article shall be deemed to diminish the rights of any member of the institution's community under any applicable collective bargaining agreement.*

Certain rights and responsibilities of this law may be in conflict with provisions of applicable collective bargaining agreements. While institutions may wish to bargain for changes to those provisions, this law does not interfere with or abrogate existing collective bargaining agreements.

#### **Campus Climate Assessments (Section 6445):**

*1. Every institution shall conduct, no less than every other year, a campus climate assessment to ascertain general awareness and knowledge of the provisions of this article, including student experience with and knowledge of reporting and college adjudicatory processes, which shall be developed using standard and commonly recognized research methods.*

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

*a. the Title IX Coordinator's role;*

*b. campus policies and procedures addressing sexual assault;*

*c. how and where to report domestic violence, dating violence, stalking or sexual assault as a victim, survivor or witness;*

*d. the availability of resources on and off campus, such as counseling, health and academic assistance;*

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

*f. bystander attitudes and behavior;*

*g. whether reporting individuals disclosed to the institution and/or law enforcement, experiences with reporting and institution processes, and reasons why they did or did not report;*

*h. the general awareness of the difference, if any, between the institution's policies and the penal law; and*

*i. general awareness of the definition of affirmative consent.*

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

*4. Information discovered or produced as a result of complying with this section shall not be subject to discovery or admitted into evidence in any federal or state court proceeding or considered for other purposes in any action for damages brought by a private party against an institution, unless, in the discretion of the court, any such information is deemed to be material to the underlying claim or defense.*

Every institution must conduct a climate survey to assess, at minimum, the topics raised in the legislation. This provision becomes effective in July 2016, meaning that the survey can be completed in the 2016-2017 year to be compliant. A college may also conduct the survey in 2015-2016 but the law allows the survey to be conducted as late as spring 2017. After that, the survey must occur at least every other year. There are no specific questions required by the law, and the law gives institutions flexibility in determining the best questions and language to use. The legislation neither limits the survey to students nor requires that institutions survey faculty and staff in addition to students. Further, the law neither requires that the survey be given to all nor limits the survey to representative samples. These decisions are to be made by each institution.

Several private colleges and the State University of New York have developed climate surveys that other institutions may choose to adopt or adapt for their purposes. Institutions may contact such institutions directly to ask about using questions and methods.

Climate surveys must be reviewed by the appropriate committees (institutional review boards) as they involve human subjects (*see generally* <http://www.hhs.gov/ohrp/>).

As with all other aspects of the law, institutions are given flexibility to conduct this survey in a way that best serves students and in consideration of the campus culture and policies.

Care must be taken to ensure that data is protected and that individuals responding cannot be identified when data is published on the web. There are no specific requirements for what information must be published, but institutions should review the top level survey result publications of other institutions that have completed climate surveys so as to ascertain best practices.

To encourage institutions to properly conduct climate surveys and encourage participation in the survey, the law creates a presumption that data and information from a climate survey is not admissible in a federal or state court proceeding unless the court, in its discretion, determines that the information is material to the underlying claim or defense. The phrase *material* makes this a higher bar than the standard legal threshold for admissibility of evidence, which is *relevance*.

The White House Task Force has developed useful guidance on developing and conducting a climate survey: <https://www.notalone.gov/assets/ovw-climate-survey.pdf>; <http://www.bjs.gov/content/pub/pdf/ccsvsfttr.pdf>.

#### **Options for Confidential Disclosure (Section 6446):**

*1. In accordance with this article, every institution shall ensure that reporting individuals have the following:*

This section applies to reporting individuals, and ensures that reporting individuals and potential reporting individuals are provided with clear and plain language regarding their options to report confidentially and/or privately, as those terms are defined in the law. The State University of New York has developed a policy relating to confidential disclosure.

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

Privileged and confidential are defined in Section 6439(5)&(6).

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

These can include on campus resources and off campus resources. This section is consistent with the Office for Civil Rights April 2011 Dear Colleague Letter and April 2014 Dear Colleague Letter/Questions and Answers regarding “nonprofessional counselors and advocates” (this is an OCR term consistent with this law’s term “counselors and advocates”).



*c. A plain language explanation of confidentiality which shall, at a minimum, include the following provision: “Even [Institution] offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a nonconfidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.”;*

This language must be included verbatim. It is intended to provide students with uniform guidance about confidentiality, regardless of where they attend college in New York State. Privacy is the default setting for institution personnel. Only a few personnel at any institution have the ability to offer true confidentiality under the law. This statement informs students that the confidential resources listed by the institution provide confidentiality, but other employees who offer privacy will not make their reported information public; they will treat it with respect and only share it as necessary to comply with law and/or institution policy.

*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, 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;*

The confidentiality referenced here is slightly different from the confidentiality referenced elsewhere in the law. Confidentiality as referenced here is intended to correspond to the confidentiality of whether to go forward with an investigation as described in Office for Civil Rights guidance interpreting Title IX. The reference to confidentiality should be read as a shorthand for the statement in paragraph (4) of this section describing information for students who are “[d]eclining to consent to an investigation.” The Office for Civil Rights’ analysis of Title IX, as stated in their April 2011 Dear Colleague Letter and April 2014 Dear Colleague Letter/Questions and Answers would require that Title IX Coordinators analyze each case where a reporting individual requests that an institution not go forward to determine whether the institution should or must go forward with an investigation and/or process anyway, even without the participation (or with the active opposition) of the reporting individual. The factors to be used by the Title IX Coordinator appear in paragraph 4 of this section below.

The final sentence of the paragraph is intended to educate students that their rights to interim measures and accommodations referenced in Section 6444(4)(h) apply regardless of whether they decide to formally report and/or to participate in the investigation or conduct process.

Reporting individuals may obtain all resources outlined in the law even if they decline to participate in an investigation or process or actively oppose the institution proceeding in its process.

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

This paragraph is intended to notify potential reporting individuals that, in accord with the Office for Civil Rights' analysis of Title IX, as stated in their April 2014 Dear Colleague Letter/Questions and Answers (modifying understanding of the April 2011 Dear Colleague Letter) institutions need not conduct a Title IX review of specific reports made at public events, including events like "Take Back the Night," "Paint the Campus Teal," "Walk a Mile" and other similar events. A Title IX Coordinator, consistent with this law, can use information learned at public events for training and prevention work, but may respect the desire of individuals to outcry at these events and not, in doing so, be required to undergo the institution's formal or informal process. A best practice would be to have an event leader state this clearly at the beginning of an outcry or open-microphone portion of such an event, and also list resources where a potential reporting individual could go to disclose confidentially and/or privately. Recall that the definition of Title IX Coordinator in this law also includes designees.

*f. Information about existing and available methods to anonymously disclose including, but not limited to information on relevant confidential hotlines provided by New York state agencies and not-for-profit entities;*

A curated list of New York State and national resources that is kept up-to-date may be found at the State University of New York Sexual Assault and Violence Response (SAVR) resource, by clicking on the blue tab named "View NYS Resources." A database of all resources is available on the SAVR site's toolkit:

[https://docs.google.com/document/d/1E3ZZqQ03ah3RV\\_qhrUrdv3TNh5cNSQiq9N8BB21Ij-Y/pub](https://docs.google.com/document/d/1E3ZZqQ03ah3RV_qhrUrdv3TNh5cNSQiq9N8BB21Ij-Y/pub). Institutions may freely copy some or all of the resources available there to their institution web site or resource.

*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, or sexual assault with parents without the permission of the reporting individual.*

This paragraph is a statement of the current requirements of the Clery Act and the Family Educational Rights and Privacy Act (FERPA). The paragraph does not change anything in law but is an educational piece for students to include such information alongside other relevant policy information.

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

This provision speaks for itself.

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

This provision speaks for itself.

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

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

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

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

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

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

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

This paragraph adds details to the balance considered by the Title IX Coordinator in (1)(d) of this section. In general, consistent with the Clery Act and the Office for Civil Rights' interpretations of Title IX, institutions should respect the request of a reporting individual to withdraw his or her complaint and to have the institution not investigate and/or take any action. However, consistent with the aforementioned federal laws, this law requires that the Title IX Coordinator or designee analyze the factors established in (4)(a)-(f) of this section to determine whether not going forward with the institution's process would fail to adequately mitigate a potential risk of harm to the reporting individual and/or other members of the community. The law does not draw bright lines or tell institutions how to weigh these factors. Rather, the law gives broad discretion to institutions, expected to act in good faith to develop policies, procedures and protocols to properly weigh the risks to the reporting individual and other members of the institution community against the wishes of the reporting individual not to have the institution move forward.

#### **Student Onboarding and Ongoing Education (Section 6447):**

*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, 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).*

Education Law 129-B codifies some of the education and training requirements of the Clery Act, 20 U.S.C. 1092(f)(8)(B) and 34 C.F.R. §658.46 (j) as amended by the Violence Against Women Act relating to primary and ongoing prevention and awareness programs while providing plain language and consistent requirements for colleges to implement those federal requirements and, in certain limited areas that are specifically delineated, going beyond the federal law. This section should be read to be consistent with the Clery Act except in the specific cases where the law goes beyond those requirements.

The law does not prescribe any specific method for educating students, and each institution should use good faith to develop programs that best meet the needs of students and educate them about these important issues.

Except as specifically required in paragraph 6 regarding student leaders and athletes, the obligation of each institution is to *offer* training in a meaningful way to students (including but not limited to entering students). With the exception of paragraph 6 covering athletes and student leaders, there is no requirement that students complete the training, and no requirement that students sign-in to a training session, or that institutions create an audit trail to show 100 percent attendance at a training or among students. There is no requirement that institutions discipline or sanction students who choose not to attend one or more offered trainings, nor are institutions required to prevent students choosing not to attend from registering for classes, graduating, etc.

While software or digital training may be *part* of a regime for training and education (and may be the only option for institutions that primarily offer classes in a distributed or online manner), for traditional brick and mortar campuses, institutions should not simply use a software package and require students to log in and prove attendance. Studies and experience show that they will not learn best this way and that they will come to resent the training.

Instead, institutions should be creative with training that is meaningful to students and that offers students different options over the course of their time on campus to learn about these issues from both the prevention and response angles. The legislation encourages institutions to work together and with statewide and local organizations to develop and offer interesting and useful trainings. Institutions may also see strong results by calling on students, faculty, staff and community members to assist in developing tailored programming.

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

Summer orientations are packed full of content and at a certain point, additional training comes with diminishing returns. Traditionally, as a best practice and pursuant to the requirements of Education Law §6432, institutions offer training in sexual assault prevention during new student orientation. The changed requirement of “onboarding” is intended to be reflective of a regime of training that is not limited to a single session on a single orientation day. Rather, each institution, consistent with its best practices and culture, should develop a series of programs over the course of the new student experience.

- a. The institution prohibits sexual and interpersonal violence and will offer resources to any victims and survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of the institution;*
- b. Relevant definitions including, but not limited to, the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent;*
- c. Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression;*
- d. The role of the Title IX Coordinator, university police or campus security, and other relevant offices that address domestic violence, dating violence, stalking, and sexual assault prevention and response;*
- e. Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact;*
- f. Bystander intervention and the importance of taking action to prevent violence when one can safely do so;*
- g. Risk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction; and*
- h. Consequences and sanctions for individuals who commit these crimes and code of conduct violations.*

At a minimum, the onboarding programming should cover the topics listed here, again in a method and manner appropriate to the institution. Not every topic needs to be covered in every session, and institutions can determine which areas to go can determine which areas to emphasize, but over the course of the programming all topics should be covered. Again, while institutions must offer this programming to students, the law does not require that students attend. The impetus is to develop creative trainings that engage students, rather than rote trainings that comply, but that bore students.

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

New students are required to be trained regardless of whether it is their first day as an undergraduate or they are in graduate or professional school, and this provision should be read consistently with the Clery Act and the paragraphs above.

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

The law discourages institutions from simply sending students to a website or a software program and relying entirely on that. Rather, with the exception of institutions that can only rely on software or web programming due to their nature as an online or distance only institution, institutions should use several methods, consistent with best practices, to best educate students.

Institutions shall also share information on sexual and interpersonal violence with parents of students. There are several ways to comply with this. One is to provide information directly to parents, either by mail or to parents attending programming. Many institutions, especially graduate and professional schools, do not collect contact information for parents.

Acknowledging this, another method to comply with this provision would be to post information on a web page directed specifically at parents, that can be found on the institution website in an appropriate place or places, that can be found via a search of the website, and that is available generally with information for parents customized to the specific institution.

*5. Every institution shall offer to all students general and specific training in domestic violence, dating violence, stalking 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.*

This provision is separate from and in addition to paragraph 2 of this section. Institutions must offer training to new students during the onboarding period and engage in a campaign over the course of each academic year that offers different training and education options.

As stated above under paragraph 1, this paragraph should be read in a manner consistent with the Clery Act. A campaign of programming shall be offered to all students that wish to participate.

Institutions should make programming available at different times and in different formats to encourage participation.

Beyond this, institutions should use good faith to determine whether specific groups of students could benefit from more specific or tailored training. There is no requirement that each group receive individualized training, but institutions should determine whether there is additional tailored training that, if offered to specific groups, could assist in prevention and response. The legislation lists examples of groups such as international students, students who are also employees, student leaders and online students. That is not an exclusive list, but are examples to help institutions identify student groups that may benefit from additional, tailored training. Institutions should tailor training to their student population.

Each institution should also use good faith efforts to determine whether specific groups of students are in high risk populations who could benefit from more specific or tailored training. Institutions determine who these populations are and an institution can determine whether it wishes to provide training for populations who are at high risk for victimization, perpetration, being a bystander to violence, or a combination of these groups. In different years, population changes may lead to different determinations of membership in high risk populations. Again, the idea is for institutions to consider going beyond generalized training equally applicable to all to specialized training that could lessen violence when directed at a specific population.

*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, 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, or sexual assault prevention prior to participating in intercollegiate athletic competition.*

This paragraph is the only provision of this onboarding section of the law that goes beyond the requirements of the Clery Act. While the above paragraphs require institutions to *offer* training and a campaign of education generally, this provision requires *completion* of training by student leaders (including athletes and club/organization officers and leaders) in an effort to change the culture in schools.

Institutions have significant flexibility in how to offer these required trainings. The legislation uses the disjunctive “or” in requiring training on domestic violence, dating violence, stalking, **or** sexual assault prevention, giving institutions flexibility to have broad or tailored programming that covers one topic in detail or several topics. Institutions may conduct a single training or a series of trainings for all athletes or student leaders or they may allow such students to show that they have attended one of many trainings offered by the institution over the course of the



semester. Institutions should endeavor to accomplish this in good faith. The training requirement is not measured by the *organization* or *team* being trained once, but by each *officer*, *leader*, or *athlete* completing the training her or himself to qualify for their position as athlete or club/organization leader. The legislation does not denote which individuals are considered “leaders” and “officers” and leaves it to the institution. While many student organizations have a president, vice president, treasurer, and secretary, other organizations have chancellors, directors, captains, or other titles. Each institution can use good faith to determine for its own organizations who the appropriate individuals are to receive the training. Other institutions may comply by requiring each organization to show that its leaders have been trained, for instance, by requiring each organization to list in its registration/recognition application four leaders (as determined by the organization) who have completed training. Completing one such training is the minimum required by the law but institutions may require or encourage attendance at multiple trainings by covered students.

As stated several times, the legislation is tailored to encourage institutions to use good faith to educate covered students in useful ways using best practices. Institutions may make small, reasonable adjustments and be in compliance. For instance, if a major training is scheduled for September 15, allowing fall sport athletes to begin competition with the understanding that they would be trained within their first month of play, or allowing student organization leaders to begin their “back to school” programming understanding that they would be imminently attending a training during the fall semester should be seen as compliant with the law, provided that the institution uses good faith to ensure such covered students do obtain the training.

This training must be offered in addition to the training offered as onboarding to incoming students.

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

The law does not specify the method for such assessment, but institutions should seek to determine whether their methods of education reflect best practices and current thinking. Assessment may include review of internal programs and procedures, review of external programs and procedure conducted at other institutions, and/or review of resources prepared by government agencies and not-for-profit entities.

No program is effective indefinitely and this requirement will remind institutions to keep current on best practices so as to educate and train students with maximum effectiveness.

### **Privacy in Legal Challenges (Section 6448):**

*Pursuant to subdivision (i) of rule three thousand sixteen of the civil practice law and rules, in any proceeding brought against an institution which seeks to vacate or modify a finding that a student was responsible for violating an institution's rules regarding a violation covered by this article, the name and identifying biographical information of any student shall be presumptively confidential and shall not be included in the pleadings and other papers from such proceeding absent a waiver or cause shown as determined by the court. Such witnesses shall be identified only as numbered witnesses. If such a name or identifying biographical information appears in a pleading or paper filed in such a proceeding, the court, absent such a waiver or cause shown, shall direct the clerk of the court to redact such name and identifying biographical information and so advise the parties.*

There have been reports of some attorneys seeking to shame reporting individuals by exposing their status as a victim or survivor of sexual or interpersonal violence by naming them in a complaint against the college or university that took action under the student conduct code. There is no legal or procedural gain from naming reporting individuals, but it has a significant negative impact on the willingness of victims to come forward and report. There is no diminution in the rights and options available to respondent students challenging student conduct findings that comes through calling reporting individuals and other student witnesses Witness 1, Witness 2, etc. This provision does not prevent the respondent (plaintiff or complainant in such a case) from naming himself or herself, or naming any student witnesses who waive their right to confidentiality. Further, this provision does not apply to non-student witnesses including, but not limited to, faculty and staff, law enforcement, and witnesses testifying in a professional capacity.

### **Reporting Aggregate Data to the Department (Section 6449):**

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

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

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

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

*d. Of those cases in paragraph c of this subdivision, the number of respondents who were found responsible through the institution's judicial or conduct process.*

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

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

*g. The number of cases in the institution's judicial or conduct process that were closed prior to a final determination after the respondent withdrew from the institution and declined to complete the disciplinary process.*

*h. The number of cases in the institution's judicial or conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination.*

*2. The department shall create a reporting mechanism for institutions to efficiently and uniformly provide the information outlined in subdivision one of this section.*

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

*4. Within one year of the effective date of this article, the department shall issue regulations in consultation with representatives from the state university of New York, city university of New York, and private and independent colleges and universities, and within two years of the effective date of this article the department shall issue a report to the governor, the temporary president of the senate, the speaker of the assembly and the chairs of the higher education committees in each house regarding the data collected pursuant to this section.*

SED shall conduct a rulemaking process, with sufficient notice and comment, and provide further guidance on complying with the provisions of this section.

**Additional Provisions:**

The legislation establishes a special unit within the State Police to assist in complying with this law including providing forensic support services to University Police, Campus Safety and local law enforcement and providing training to college campuses, and appropriates \$4.5 million dollars to the State Police. Another \$4.5 million dollars is appropriated through the Office of Victim Services and Department of Health towards prevention, education and victim services of rape crisis centers. Finally, \$1 million dollars is appropriated to colleges and universities for training and other expenses related to successful implementation of this legislation.

## VI- Further Resources:

- Governor's Office Program Page: <https://www.ny.gov/programs/enough-enough-combating-sexual-assault-college-campuses>
- New York Article 129-B Legislation: <http://www.nysenate.gov/legislation/bills/2015/S5965>
- Signed Legislation Press Release: <https://www.governor.ny.gov/news/governor-cuomo-signs-enough-enough-legislation-combat-sexual-assault-college-and-university>
- Distinctions Between Penal Law and Discipline: <http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/>
- New York State Department of Health Rape Crisis and Sexual Violence Prevention Program: [https://www.health.ny.gov/prevention/sexual\\_violence/](https://www.health.ny.gov/prevention/sexual_violence/)
- New York State Office for the Prevention of Domestic Violence: <http://www.opdv.ny.gov/>
- New York State Coalition Against Sexual Assault: <http://nyscasa.org/>
- New York State Coalition Against Domestic Violence: <http://www.nyscadv.org/>
- New York City Alliance Against Sexual Assault: <http://www.svfreenyc.org/>
- Violence Against Women Act Final Regulations: <https://www.federalregister.gov/articles/2014/10/20/2014-24284/violence-against-women-act>
- Guidance for Complying with the Violence Against Women Act: <http://system.suny.edu/media/suny/content-assets/documents/generalcounsel/SUNY-VAWA-Guidance-2014.pdf>
- Federal Department of Education Office for Civil Rights Title IX Guidance: <http://www2.ed.gov/about/offices/list/ocr/publications.html#TitleIX>

SED provides links to these external resources throughout this document but does not control these resources. Such links are not an endorsement of any content not created by SED. SED welcomes additional resources developed by institutions, state agencies and community organizations to aid in compliance with this law.