

PROGRAM BILL # 8 R

Legislative Bill Drafting Commission
12034-02-5

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal

S. -----
Senate

s15 Addabbo	s49 Farley	s63 Kennedy	s40 Murphy	s10 Sanders
s46 Amedore	s17 Felder	s34 Klein	s54 Nozzolio	s23 Savino
s11 Avella	s02 Flanagan	s28 Krueger	s58 O'Mara	s41 Serino
s42 Bonacic	s55 Funke	s24 Lanza	s62 Ortt	s29 Serrano
s04 Boyle	s59 Gallivan	s39 Larkin	s60 Panepinto	s51 Seward
s44 Breslin	s12 Gianaris	s37 Latimer	s21 Parker	s09 Skelos
s38 Carlucci	s22 Golden	s01 LaValle	s13 Peralta	s26 Squadron
s14 Comrie	s47 Griffo	s52 Libous	s30 Perkins	s16 Stavisky
s03 Croci	s20 Hamilton	s45 Little	s61 Ranzenhofer	s35 Stewart-
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s48 Ritchie	Cousins
s32 Diaz	s36 Hassell-	s43 Marchione	s33 Rivera	s53 Valesky
s18 Dilan	Thompson	s07 Martins	s56 Robach	s08 Venditto
s31 Espallat	s27 Hoylman	s25 Montgomery	s19 Sampson	s57 Young

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

IN ASSEMBLY--Introduced by M. of A.

a049 Abbate	a053 Davila	a077 Joyner	a133 Nojay	a140 Schimminger
a092 Abinanti	a034 DenDekker	a020 Kaminsky	a037 Nolan	a076 Seawright
a084 Arroyo	a054 Dilan	a094 Katz	a130 Oaks	a087 Sepulveda
a035 Aubry	a081 Dinowitz	a074 Kavanagh	a069 O'Donnell	a065 Silver
a120 Barclay	a147 DiPietro	a142 Kearns	a051 Ortiz	a027 Simanowitz
a106 Barrett	a115 Duprey	a040 Kim	a091 Otis	a052 Simon
a060 Barron	a004 Englebright	a131 Kolb	a132 Palmesano	a036 Simotas
a082 Benedetto	a109 Faby	a105 Lalor	a002 Palumbo	a104 Skartados
a042 Bichotte	a071 Farrell	a013 Lavine	a088 Paulin	a099 Skouffis
a079 Blake	a126 Finch	a134 Lawrence	a141 Peoples-	a022 Solages
a117 Blankenbush	a008 Fitzpatrick	a050 Lentol	Stokes	a114 Stec
a062 Borelli	a124 Friend	a125 Lifton	a058 Perry	a110 Steck
a098 Brabenec	a095 Galef	a072 Linares	a059 Persaud	a127 Stirpe
a026 Braunstein	a137 Gantt	a102 Lopez	a086 Pichardo	a112 Tedisco
a044 Brennan	a007 Garbarino	a123 Lupardo	a089 Pretlow	a101 Tenney
a119 Brindisi	a148 Giglio	a010 Lupinacci	a073 Quart	a001 Thiele
a138 Bronson	a080 Gjonaj	a121 Magee	a019 Ra	a061 Titone
a046 Brook-Krasny	a066 Glick	a129 Magnarelli	a012 Raia	a031 Titus
a093 Buchwald	a023 Goldfeder	a064 Malliotakis	a006 Ramos	a055 Walker
a118 Butler	a150 Goodell	a030 Markey	a043 Richardson	a146 Walter
a103 Cahill	a075 Gottfried	a090 Mayer	a078 Rivera	a141 Weinstein
a145 Ceretto	a005 Graf	a108 McDonald	a128 Roberts	a024 Weprin
a033 Clark	a100 Gunther	a014 McDonough	a056 Robinson	a113 Woerner
a047 Colton	a139 Hawley	a017 McKeivitt	a068 Rodriguez	a143 Wozniak
a032 Cook	a083 Heastie	a107 McLaughlin	a067 Rosenthal	a070 Wright
a144 Corwin	a028 Hevesi	a038 Miller	a025 Rozic	a096 Zebrowski
a085 Crespo	a048 Hiking	a015 Montesano	a116 Russell	a029
a122 Crouch	a018 Hooper	a136 Morelle	a149 Ryan	
a021 Curran	a097 Jaffee	a057 Mosley	a009 Saladino	
a063 Cusick	a011 Jean-Pierre	a039 Moya	a111 Santabarbara	
a045 Cymbrowitz	a135 Johns	a003 Murray	a016 Schimel	

with M. of A. as co-sponsors

--read once and referred to the
Committee on

EDUCLA *Governor 8 R-1*
(Relates to the implementation by
colleges and universities of sexual
assault, dating violence, domestic
violence and stalking prevention and
response policies and procedures;
and making an)

Ed L. coll/univ prevent policies

AN ACT

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

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

findings; and making appropriations therefor

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

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

3 ARTICLE 129-B

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

7 Section 6439. Definitions.

8 6440. General provisions.

9 6441. Affirmative consent to sexual activity.

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

11 6443. Students' bill of rights.

12 6444. Response to reports.

13 6445. Campus climate assessments.

14 6446. Options for confidential disclosure.

15 6447. Student onboarding and ongoing education.

16 6448. Privacy in legal challenges.

17 6449. Reporting aggregate data to the department.

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

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

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

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

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

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

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

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

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

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

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

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

4 § 6440. General provisions. 1. Every institution shall:

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

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

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

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

24 3. If an institution fails to file a certificate of compliance on or
25 before September first beginning in two thousand sixteen, such institu-
26 tion shall be ineligible to receive state aid or assistance until it
27 files such a certificate. The department shall conduct audits of insti-
28 tutions by random selection, at any time after September first, two

1 thousand sixteen, to ensure compliance with the provisions of this arti-
2 cle, and shall post information and statistics regarding compliance with
3 this article on the department's website.

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

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

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

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

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

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

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

1 § 6441. Affirmative consent to sexual activity. 1. Every institution
2 shall adopt the following definition of affirmative consent as part of
3 its code of conduct: "Affirmative consent is a knowing, voluntary, and
4 mutual decision among all participants to engage in sexual activity.
5 Consent can be given by words or actions, as long as those words or
6 actions create clear permission regarding willingness to engage in the
7 sexual activity. Silence or lack of resistance, in and of itself, does
8 not demonstrate consent. The definition of consent does not vary based
9 upon a participant's sex, sexual orientation, gender identity, or gender
10 expression."

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

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

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

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

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

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

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

3 § 6442. Policy for alcohol and/or drug use amnesty. 1. Every institu-
4 tion shall adopt and implement the following policy as part of its code
5 of conduct: "The health and safety of every student at the {Institution}
6 is of utmost importance. {Institution} recognizes that students who have
7 been drinking and/or using drugs (whether such use is voluntary or
8 involuntary) at the time that violence, including but not limited to
9 domestic violence, dating violence, stalking, or sexual assault occurs
10 may be hesitant to report such incidents due to fear of potential conse-
11 quences for their own conduct. {Institution} strongly encourages
12 students to report domestic violence, dating violence, stalking, or
13 sexual assault to institution officials. A bystander acting in good
14 faith or a reporting individual acting in good faith that discloses any
15 incident of domestic violence, dating violence, stalking, or sexual
16 assault to {Institution's} officials or law enforcement will not be
17 subject to {Institution's} code of conduct action for violations of
18 alcohol and/or drug use policies occurring at or near the time of the
19 commission of the domestic violence, dating violence, stalking, or sexu-
20 al assault."

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

23 § 6443. Students' bill of rights. Every institution shall adopt and
24 implement the following "Students' Bill of Rights" as part of its code
25 of conduct which shall be distributed annually to students, made avail-
26 able on each institution's website, posted in campus residence halls and
27 campus centers, and shall include links or information to file a report
28 and seek a response, pursuant to section sixty-four hundred forty-four

1 of this article, and the options for confidential disclosure pursuant to
2 section sixty-four hundred forty-six of this article: "All students have
3 the right to: 1. Make a report to local law enforcement and/or state
4 police; 2. Have disclosures of domestic violence, dating violence,
5 stalking, and sexual assault treated seriously; 3. Make a decision about
6 whether or not to disclose a crime or violation and participate in the
7 judicial or conduct process and/or criminal justice process free from
8 pressure by the institution; 4. Participate in a process that is fair,
9 impartial, and provides adequate notice and a meaningful opportunity to
10 be heard; 5. Be treated with dignity and to receive from the institution
11 courteous, fair, and respectful health care and counseling services,
12 where available; 6. Be free from any suggestion that the reporting indi-
13 vidual is at fault when these crimes and violations are committed, or
14 should have acted in a different manner to avoid such crimes or
15 violations; 7. Describe the incident to as few institution represen-
16 tatives as practicable and not be required to unnecessarily repeat a
17 description of the incident; 8. Be protected from retaliation by the
18 institution, any student, the accused and/or the respondent, and/or
19 their friends, family and acquaintances within the jurisdiction of the
20 institution; 9. Access to at least one level of appeal of a determi-
21 nation; 10. Be accompanied by an advisor of choice who may assist and
22 advise a reporting individual, accused, or respondent throughout the
23 judicial or conduct process including during all meetings and hearings
24 related to such process; and 11. Exercise civil rights and practice of
25 religion without interference by the investigative, criminal justice, or
26 judicial or conduct process of the institution."

27 § 6444. Response to reports. 1. Every institution shall ensure that
28 reporting individuals are advised of their right to:

- 1 a. Notify university police or campus security, local law enforcement,
2 and/or state police;
- 3 b. Have emergency access to a Title IX Coordinator or other appropri-
4 ate official trained in interviewing victims of sexual assault who shall
5 be available upon the first instance of disclosure by a reporting indi-
6 vidual to provide information regarding options to proceed, and, where
7 applicable, the importance of preserving evidence and obtaining a sexual
8 assault forensic examination as soon as possible, and detailing that the
9 criminal justice process utilizes different standards of proof and
10 evidence and that any questions about whether a specific incident
11 violated the penal law should be addressed to law enforcement or to the
12 district attorney. Such official shall also explain whether he or she is
13 authorized to offer the reporting individual confidentiality or privacy,
14 and shall inform the reporting individual of other reporting options;
- 15 c. Disclose confidentially the incident to institution represen-
16 tatives, who may offer confidentiality pursuant to applicable laws and
17 can assist in obtaining services for reporting individuals;
- 18 d. Disclose confidentially the incident and obtain services from the
19 state or local government;
- 20 e. Disclose the incident to institution representatives who can offer
21 privacy or confidentiality, as appropriate, and can assist in obtaining
22 resources for reporting individuals;
- 23 f. File a report of sexual assault, domestic violence, dating
24 violence, and/or stalking and the right to consult the Title IX Coordi-
25 nator and other appropriate institution representatives for information
26 and assistance. Reports shall be investigated in accordance with insti-
27 tution policy and a reporting individual's identity shall remain private
28 at all times if said reporting individual wishes to maintain privacy;

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

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

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

9 2. Every institution shall ensure that, at a minimum, at the first
10 instance of disclosure by a reporting individual to an institution
11 representative, the following information shall be presented to the
12 reporting individual: "You have the right to make a report to university
13 police or campus security, local law enforcement, and/or state police or
14 choose not to report; to report the incident to your institution; to be
15 protected by the institution from retaliation for reporting an incident;
16 and to receive assistance and resources from your institution."

17 3. Every institution shall ensure that reporting individuals have
18 information about resources, including intervention, mental health coun-
19 seling, and medical services, which shall include information on whether
20 such resources are available at no cost or for a fee. Every institution
21 shall also provide information on sexually transmitted infections, sexu-
22 al assault forensic examinations, and resources available through the
23 New York state office of victim services, established pursuant to
24 section six hundred twenty-two of the executive law.

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

27 a. When the accused or respondent is a student, to have the institu-
28 tion issue a "no contact order" consistent with institution policies and

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

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

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

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

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

7 f. When the accused or respondent is a student determined to present a
8 continuing threat to the health and safety of the community, to subject
9 the accused or respondent to interim suspension pending the outcome of a
10 judicial or conduct process consistent with this article and the insti-
11 tution's policies and procedures. Both the accused or respondent and the
12 reporting individual shall, upon request and consistent with the insti-
13 tution's policies and procedures, be afforded a prompt review, reason-
14 able under the circumstances, of the need for and terms of an interim
15 suspension, including potential modification, and shall be allowed to
16 submit evidence in support of his or her request;

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

22 h. To obtain reasonable and available interim measures and accommo-
23 dations that effect a change in academic, housing, employment, transpor-
24 tation or other applicable arrangements in order to help ensure safety,
25 prevent retaliation and avoid an ongoing hostile environment, consistent
26 with the institution's policies and procedures. Both the accused or
27 respondent and the reporting individual shall, upon request and consist-
28 ent with the institution's policies and procedures, be afforded a prompt

1 review, reasonable under the circumstances, of the need for and terms of
2 any such interim measure and accommodation that directly affects him or
3 her, and shall be allowed to submit evidence in support of his or her
4 request.

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

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

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

1 reporting individual must be similarly provided to a respondent and any
2 rights provided to a respondent must be similarly provided to a report-
3 ing individual.

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

8 i. For the respondent, accused, and reporting individual to be accom-
9 panied by an advisor of choice who may assist and advise a reporting
10 individual, accused, or respondent throughout the judicial or conduct
11 process including during all meetings and hearings related to such proc-
12 ess. Rules for participation of such advisor shall be established in the
13 code of conduct.

14 ii. To a prompt response to any complaint and to have the complaint
15 investigated and adjudicated in an impartial, timely, and thorough
16 manner by individuals who receive annual training in conducting investi-
17 gations of sexual violence, the effects of trauma, impartiality, the
18 rights of the respondent, including the right to a presumption that the
19 respondent is "not responsible" until a finding of responsibility is
20 made pursuant to the provisions of this article and the institution's
21 policies and procedures, and other issues including, but not limited to
22 domestic violence, dating violence, stalking or sexual assault.

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

26 iv. To have the institution's judicial or conduct process run concu-
27 rently with a criminal justice investigation and proceeding, except for
28 temporary delays as requested by external municipal entities while law

1 enforcement gathers evidence. Temporary delays should not last more than
2 ten days except when law enforcement specifically requests and justifies
3 a longer delay.

4 v. To review and present available evidence in the case file, or
5 otherwise in the possession or control of the institution, and relevant
6 to the conduct case, consistent with institution policies and proce-
7 dures.

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

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

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

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

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

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

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

9 6. For crimes of violence, including, but not limited to sexual
10 violence, defined as crimes that meet the reporting requirements pursu-
11 ant to the federal Clery Act established in 20 U.S.C.
12 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the
13 transcript of students found responsible after a conduct process that
14 they were "suspended after a finding of responsibility for a code of
15 conduct violation" or "expelled after a finding of responsibility for a
16 code of conduct violation." For the respondent who withdraws from the
17 institution while such conduct charges are pending, and declines to
18 complete the disciplinary process, institutions shall make a notation on
19 the transcript of such students that they "withdrew with conduct charges
20 pending." Each institution shall publish a policy on transcript
21 notations and appeals seeking removal of a transcript notation for a
22 suspension, provided that such notation shall not be removed prior to
23 one year after conclusion of the suspension, while notations for expul-
24 sion shall not be removed. If a finding of responsibility is vacated
25 for any reason, any such transcript notation shall be removed.

26 7. Institutions that lack appropriate on-campus resources or services
27 shall, to the extent practicable, enter into memoranda of understanding,
28 agreements or collaborative partnerships with existing community-based

1 organizations, including rape-crisis centers and domestic violence shel-
2 ters and assistance organizations, to refer students for assistance or
3 make services available to students, including counseling, health,
4 mental health, victim advocacy, and legal assistance, which may also
5 include resources and services for the respondent.

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

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

14 § 6445. Campus climate assessments. 1. Every institution shall
15 conduct, no less than every other year, a campus climate assessment to
16 ascertain general awareness and knowledge of the provisions of this
17 article, including student experience with and knowledge of reporting
18 and college adjudicatory processes, which shall be developed using stan-
19 dard and commonly recognized research methods.

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

22 a. the Title IX Coordinator's role;

23 b. campus policies and procedures addressing sexual assault;

24 c. how and where to report domestic violence, dating violence, stalk-
25 ing or sexual assault as a victim, survivor or witness;

26 d. the availability of resources on and off campus, such as coun-
27 seling, health and academic assistance;

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

4 f. bystander attitudes and behavior;

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

8 h. the general awareness of the difference, if any, between the insti-
9 tution's policies and the penal law; and

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

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

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

23 § 6446. Options for confidential disclosure. 1. In accordance with
24 this article, every institution shall ensure that reporting individuals
25 have the following:

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

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

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

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

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

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

5 g. Information regarding institutional crime reporting including, but
6 not limited to: reports of certain crimes occurring in specific
7 geographic locations that shall be included in the institution's annual
8 security report pursuant to the Clery Act, 20 U.S.C. 1092(f), in an
9 anonymized manner that identifies neither the specifics of the crime nor
10 the identity of the reporting individual; that the institution is obli-
11 gated to issue timely warnings of crimes enumerated in the Clery Act
12 occurring within relevant geography that represent a serious or continu-
13 ing threat to students and employees, except in those circumstances
14 where issuing such a warning may compromise current law enforcement
15 efforts or when the warning itself could potentially identify the
16 reporting individual; that a reporting individual shall not be identi-
17 fied in a timely warning; that the Family Educational Rights and Privacy
18 Act, 20 U.S.C. 1232g, allows institutions to share information with
19 parents when i. there is a health or safety emergency, or ii. when the
20 student is a dependent on either parent's prior year federal income tax
21 return; and that generally, the institution shall not share information
22 about a report of domestic violence, dating violence, stalking, or sexu-
23 al assault with parents without the permission of the reporting individ-
24 ual.

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

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

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

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

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

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

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

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

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

24 § 6447. Student onboarding and ongoing education. 1. Every institution
25 shall adopt a comprehensive student onboarding and ongoing education
26 campaign to educate members of the institution's community about domes-
27 tic violence, dating violence, stalking, and sexual assault, in compli-
28 ance with applicable federal laws, including the Clery Act as amended by

1 the Violence Against Women Act reauthorization of 2013, 20 U.S.C.
2 1092(f).

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

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

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

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

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

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

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

24 g. Risk assessment and reduction including, but not limited to, steps
25 that potential victims, perpetrators, and bystanders can take to lower
26 the incidence of violations, which may contain information about the
27 dangers of drug and alcohol use, including underage drinking and binge
28 drinking, involuntary consumption of incapacitating drugs and the danger

1 of mislabeled drugs and alcohol, the importance of communication with
2 trusted friends and family whether on campus or off campus, and the
3 availability of institution officials who can answer general or specific
4 questions about risk reduction; and

5 h. Consequences and sanctions for individuals who commit these crimes
6 and code of conduct violations.

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

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

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

23 6. Every institution shall require that each student leader and offi-
24 cer of student organizations recognized by or registered with the insti-
25 tution, as well as those seeking recognition by the institution,
26 complete training on domestic violence, dating violence, stalking, or
27 sexual assault prevention prior to receiving recognition or registra-
28 tion, and each institution shall require that each student-athlete

1 complete training on domestic violence, dating violence, stalking, or
2 sexual assault prevention prior to participating in intercollegiate
3 athletic competition.

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

7 § 6448. Privacy in legal challenges. Pursuant to subdivision (i) of
8 rule three thousand sixteen of the civil practice law and rules, in any
9 proceeding brought against an institution which seeks to vacate or modi-
10 fy a finding that a student was responsible for violating an insti-
11 tution's rules regarding a violation covered by this article, the name
12 and identifying biographical information of any student shall be
13 presumptively confidential and shall not be included in the pleadings
14 and other papers from such proceeding absent a waiver or cause shown as
15 determined by the court. Such witnesses shall be identified only as
16 numbered witnesses. If such a name or identifying biographical informa-
17 tion appears in a pleading or paper filed in such a proceeding, the
18 court, absent such a waiver or cause shown, shall direct the clerk of
19 the court to redact such name and identifying biographical information
20 and so advise the parties.

21 § 6449. Reporting aggregate data to the department. 1. Institutions
22 shall annually report to the department the following information about
23 reports of domestic violence, dating violence, stalking and sexual
24 assault:

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

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

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

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

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

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

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

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

24 2. The department shall create a reporting mechanism for institutions
25 to efficiently and uniformly provide the information outlined in subdi-
26 vision one of this section.

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

4 4. Within one year of the effective date of this article, the depart-
5 ment shall issue regulations in consultation with representatives from
6 the state university of New York, city university of New York, and
7 private and independent colleges and universities, and within two years
8 of the effective date of this article the department shall issue a
9 report to the governor, the temporary president of the senate, the
10 speaker of the assembly and the chairs of the higher education commit-
11 tees in each house regarding the data collected pursuant to this
12 section.

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

15 (i) Privacy of name in certain legal challenges to college/university
16 disciplinary findings. In any proceeding brought against a college or
17 university that is chartered by the regents or incorporated by special
18 act of the legislature, which proceeding seeks to vacate or modify a
19 finding that a student was responsible for a violation of college or
20 university rules regarding a violation covered by article one hundred
21 twenty-nine-B of the education law, the name and identifying biograph-
22 ical information of any student shall be presumptively confidential and
23 shall not be included in the pleadings and other papers from such
24 proceeding absent a waiver or cause shown as determined by the court.
25 Such witnesses shall be identified only as numbered witnesses. If such a
26 name or identifying biographical information appears in a pleading or
27 paper filed in such a proceeding, the court, absent such a waiver or

1 cause shown, shall direct the clerk of the court to redact such name and
2 identifying biographical information and so advise the parties.

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

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

14 § 4. The sum of four million five hundred thousand dollars
15 (\$4,500,000) is hereby appropriated to the division of state police out
16 of any moneys in the state treasury in the general fund to the credit of
17 the state purposes account, not otherwise appropriated, and made imme-
18 diately available, for the purpose of carrying out the provisions of
19 section 232 of the executive law as added by section three of this act.
20 Such moneys shall be payable on the audit and warrant of the comptroller
21 on vouchers certified or approved by the director of the budget as
22 submitted by the superintendent of state police in the manner prescribed
23 by law.

24 § 5. The sum of four million five hundred thousand dollars
25 (\$4,500,000) is hereby appropriated to miscellaneous aid to localities
26 out of any moneys in the state treasury in the general fund to the cred-
27 it of the local assistance account, not otherwise appropriated, and made
28 immediately available, for services and expenses of rape crisis centers,

1 including but not limited to prevention, education and victim services
2 on college campuses in the state. Notwithstanding any law to the contra-
3 ry, the office of victim services and the department of health shall
4 administer the program and allocate funds pursuant to a plan approved by
5 the director of the budget. Such allocation methodology shall be based
6 in part on the following factors: certification status, number of
7 programs, and regional diversity. Funds hereby appropriated may be
8 transferred or suballocated to any state department or agency. Such
9 moneys shall be payable on the audit and warrant of the comptroller on
10 vouchers certified or approved by the director of the budget in the
11 manner prescribed by law.

12 § 6. The sum of one million dollars (\$1,000,000) is hereby appropri-
13 ated to miscellaneous aid to localities out of any moneys in the state
14 treasury in the general fund to the credit of the local assistance
15 account, not otherwise appropriated, and made immediately available, for
16 services and expenses of college campuses for training and other
17 expenses related to implementation of article 129-b of the education
18 law, pursuant to a plan administered and approved by the director of the
19 budget. Funds hereby appropriated may be transferred or suballocated to
20 any state department or agency. Such moneys shall be payable on the
21 audit and warrant of the comptroller on vouchers certified or approved
22 by the director of the budget in the manner prescribed by law.

23 § 7. This act shall take effect immediately; provided that sections
24 one, two and three of this act shall take effect on the ninetieth day
25 after it shall have become a law, provided, however, that sections 6445
26 and 6449 of article 129-B of the education law, as added by section one
27 of this act, shall take effect one year after it shall have become law.