

**Preliminary Report: Statewide Review of Compliance with Education Law
Article 129-B**

September 19, 2017

New York State Office of Campus Safety

Glossary

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EXECUTIVE SUMMARY

Signed into law by Governor Andrew M. Cuomo on July 7, 2015, New York’s “Enough is Enough” (EIE) law (Education Law Article 129-B, Sections 6439-6449) created stringent new requirements for all colleges and universities in the state – both public and private – to protect students from Sexual Assault. It is the Nation’s most aggressive policy to put an end to sexual assault on college and university campuses.

The law went into effect statewide in September 2016, with all schools certifying to the State Education Department that they were in compliance. However, recent published reports have indicated that significant gaps may still exist in some schools’ polices.

On May 17, 2017, Governor Cuomo ordered a comprehensive statewide review of compliance with the Enough is Enough law at colleges and universities. A multi-agency team – with representatives from the New York State Police, Department of Health, Office of Victim Services, Division of Homeland Security & Emergency Services, Homes and Community Renewal, Department of Financial Services, and Department of State – initiated a thorough review of the policies and procedures of private and public colleges and universities across the state to ensure compliance with the law. The team was tasked with evaluating each institution’s compliance related to adoption of policies and procedures; student and staff training; notification of students’ rights and responsibilities; and conduct of investigations and disciplinary processes pursuant to New York Education Law Article 129-B.

The Governor directed the review be completed for all 244¹ schools by the beginning of the fall 2017 semester. Subsequently, an in-depth analysis and detailed examination of practices will be undertaken where the preliminary review and findings warrant further investigation. This effort is being led by the New York State Office of Campus Safety (“OCS”).

This report details the preliminary findings of the statewide review. In sum, the review found that while many colleges and universities had taken steps to comply with the EIE requirements, many institutions need to take additional steps to achieve compliance with the law. In most cases, the root cause(s) of each institution’s non-compliance can be determined from the information submitted, and communicated to these schools. All colleges and universities that are not in compliance must come into compliance immediately and no later than 60 days of this review. Further, the State will conduct an examination of practices and procedures for any institution that was preliminarily determined to be substantially non-compliant.

¹ OCS relied upon information supplied by the State Education Department in identifying the 244 subject institutions.

Specific findings are as follows:

- 95 schools (38.9 %) were found to be compliant with the EIE requirements. Several schools and systems are demonstrating innovative approaches to protecting students, including: linking law enforcement, campus administration, and victim services to better serve victims of Sexual Assault, as well as using technology to provide informational resources to students and direct access to assistance when necessary.
- 29 institutions (11.9%) were found to be non-compliant, meaning their policies were deficient on many elements.
- 120 (49.2 %) schools were found to be significantly compliant. These institutions presented concerns that must be addressed to comply with all EIE requirements. Those concerns fall into the following areas.

Training Consistency: Education Law Article 129-B requires that institutions adopt a comprehensive student onboarding and ongoing education campaign to inform students about Domestic Violence, Dating Violence, Stalking and Sexual Assault. There was divergence among institutions in the quality and legal sufficiency of the training provided to students and staff.

Lack of Memorandums of Understanding (MOUs)/Adequate services available to students: Education Law Article 129-B requires institutions that lack appropriate on-campus resources or services to enter into agreements or collaborative partnerships, to the extent practicable, with existing community based organizations including rape crisis centers and domestic violence shelters and assistance organizations, in order to enable institutions to refer students or to make services available to students. Many New York State colleges and universities lacked sufficient on-campus resources, did not enter into agreements with community-based organizations as required, and did not provide information demonstrating why this was impracticable.

Verification of receipt/completion of training by students: Education Law Article 129-B requires training of students during the onboarding period, as well. In conducting this review it was found that some institutions made training and education programs available to students but failed to ensure that the students actually accessed the programs or completed them.

Accessibility and Availability of Information: Education Law Article 129-B requires that all mandated rules and policies be posted on the institution's website in a manner that is easily accessible to its students and to the public. In many cases the rules and policies were not easily located on an institution's website and took significant time to locate and access.

Definition of Confidentiality versus Privacy and Sufficient Access to Confidential resources: Education Law Article 129-B requires that every institution provide a confidential means of reporting Domestic Violence, Dating Violence, Stalking and Sexual Assault, provide a plain language explanation of confidentiality, information about how the institution will assess and respond to a request for confidentiality, and information about available methods to anonymously disclose their experience. Several schools failed to clearly demonstrate an

understanding of the difference between confidentiality and privacy, and many schools lacked sufficient on-campus confidential resources.

Missing, Inconsistent, or Contradictory Information: Education Law Article 129-B requires every institution to adopt specific policies and procedures including specific statutory language related to the adoption of a universal definition of Affirmative Consent; a policy for Alcohol and/or Drug Use Amnesty; a Students' Bill of Rights; the right to choose to report to the State Police, University Police/Campus Security, and/or local law enforcement, or to choose not to report; and the right to be protected from retaliation, among other things. Many New York colleges and universities failed to fully incorporate these policies, procedures and or statutory language into their Code of Conduct, policies or procedures. Further, in some instances while institutions satisfied this requirement, they nonetheless maintained other policies that conflicted with the legally-mandated requirements.

Option of a Hearing; Option of Mediation/Informal Resolution: Education Law Article 129-B provides that every student be afforded the right to offer evidence during an investigation and to present evidence and testimony at a hearing, where appropriate, as well as have access to at least one level of appeal before a panel. The review uncovered that many New York colleges and universities do not offer a hearing to their students who report or are accused of Sexual Assault, Domestic Violence, Dating Violence or Stalking; and oftentimes the appeal was heard by a single individual rather than a panel. Many school policies also offer the option of an informal resolution, such as mediation, which may be inappropriate for a variety of reasons.

While the information submitted by institutions demonstrated positive overall attempts at compliance with the law, deficiencies were found at many institutions in the state. And while many of the uncovered deficiencies can be remediated without substantial difficulty, some will require considerable overhaul. More work must be done on campuses to ensure compliance with the law, and to ensure all students are protected from Sexual Assault, Dating Violence, Stalking and Domestic Violence.

OCS finds the results of this review encouraging, but not satisfactory. New York State expects and will continue to pursue 100% compliance with the Enough is Enough law at all higher education institutions in the state.

SCHOOLS MUST COMPLY WITH ALL ELEMENTS OF THE LAW

Article 129-B requires every school to comply with all provisions of the law. While the vast majority of institutions were found to be significantly compliant, many were not yet in compliance with all required elements of the law. These schools must make compliance with the law the priority.

Institutions that are not in compliance with all provisions will receive correspondence from OCS notifying them of this non-compliant status. These schools will be required to submit an action plan to achieve compliance with all of the law's requirements to OCS within 30 days of this review, and to submit documentation of compliance to OCS within 60 days.

If an institution fails to engage in a good faith effort to comply with these timelines, it may be considered to have filed an invalid certificate of compliance pursuant to Education Law Section 6443(3), and be ineligible to receive any state aid or assistance until verification can be made that the school is in compliance.

In addition to this action, Phase II of the review will be ongoing, which will explore operational deficiencies, requiring additional follow-up.

THE “ENOUGH IS ENOUGH” LAW (EDUCATION LAW ARTICLE 129-B)

New York Education Law Article 129-B, comprised of sections 6439-6449, establishes requirements upon all public and private higher education institutions in the state governing their treatment of allegations of Sexual Assault, Dating Violence, Stalking and Domestic Violence. These requirements include a uniform statewide definition of affirmative consent, a uniform statewide amnesty policy, and expanded access to law enforcement and health service resources. The law also requires training of staff and students, establishes a “students’ bill of rights” and provides the procedures to be followed in addressing sexual violence on and off campus.

Among other requirements, Article 129-B requires schools to:

- Conduct a campus climate assessment at least once every two years.
 - This must include specific categorical questions about student experience with and understanding of the EIE law, penal law, and campus procedures.
- Adopt written rules and procedures for complying with EIE provisions.
 - These policies must include the statutory definition of affirmative consent and statutory amnesty policy.
 - Schools must provide these to all students (included in the School’s Code of Conduct) and post on the school’s website in a manner easily accessible to the public.
 - A copy must also be filed with the State Education Department (SED).

- Adopt a statutory campus Sexual Assault “Students’ Bill of Rights.”
 - Must include statutory elements, including rights to services and certain conduct of school employees.
 - Schools must provide this to all students (as part of Code of Conduct), post on the school website, post in residence halls and campus centers, and include links on school websites and information on filing a report and seeking a response, as well as options for making confidential disclosure.

- Adopt ongoing student training campaign, including:
 - Providing training to all first-year and transfer students during onboarding on specific laws, policies and procedures under EIE.
 - Providing training to all new students at all levels;
 - Providing training on Domestic Violence, Dating Violence, Stalking or Sexual Assault prevention to leaders of student organizations and student-athletes. These students are required to complete such training prior to participation in the specified student activity.
 - Offering general, and specific training on Domestic Violence, Dating Violence, Stalking and Sexual Assault prevention to all students, and provide specialized training to targeted at-risk subgroups;
 - Using multiple methods to educate students about violence prevention generally;
 - Sharing general information about Domestic Violence, Dating Violence, Stalking and Sexual Assault prevention with parents of students; and
 - Regular assessment and updating of the training.

- Annually certify to SED that they are in compliance with all provisions.

THE REVIEW PROCEDURE

This review will be conducted in two phases. Phase I is complete, and is the basis for this preliminary report. Phase II will begin immediately, utilizing the results of Phase I as a guide, and will focus on addressing shortfalls in institutions’ procedures when investigating and adjudicating reports of Sexual Assault.

Phase I:

A paper review was conducted of the written policies and procedures required under Education Law Article 129-B, which measured compliance with the significant requirements of the law. Schools were asked to submit documents showing compliance with the law, where such could be demonstrated through documentation. Specifically, all schools were asked to provide the following information:

Code of Conduct (sections 6439 – 6443)

- a) Information and documentation related to [the institution's] Code of Conduct including the effective date of the Code and the method and manner in which the Code was distributed and posted.
- b) Information and documentation regarding the rules/policies that [the institution] provided to all students and the method and manner utilized by [the institution] to disseminate said rules/policies.

Rights of Reporting Individuals (section 6444)

- a) Information and documentation related to the manner and method by which individuals reporting an incident of Sexual Assault, Domestic Violence, Dating Violence and/or Stalking were advised of their rights pursuant to Education Law Article 129-B; and information and documentation related to reporting individuals' acknowledgement of same.
- b) Information and documentation regarding the manner and method by which reporting individuals were notified of their right to receive assistance from institution representatives in initiating legal proceedings and reporting individuals' acknowledgment of same.
- c) Information and documentation regarding the manner and method by which [the institution] seeks consent from reporting individuals prior to conducting an investigation.
 - a. Information and documentation regarding the manner and method the institution utilizes to determine whether an investigation is required.
 - b. Information and documentation regarding the manner and method by which [the institution] notifies reporting individuals that an investigation is required.
- d) Information and documentation regarding the manner and method by which reporting individuals were provided information related to resources available to them and reporting individuals' acknowledgement of same.

Confidentiality/Privacy (section 6446)

- a) Information and documentation regarding the manner and method by which reporting individuals were notified of their reporting options pursuant to Education Law Article 129-B including but not limited to information and documentation as to which officials at the institution could offer the reporting individual confidentiality versus privacy, and reporting individuals' acknowledgement of same.
- b) A copy of the institution's plain language explanation of confidentiality and information and documentation regarding the manner and method that it was distributed to all students.

- c) Information and documentation regarding the manner and method which the institution informed all students about public awareness and advocacy events.

No Contact Orders (section 6444)

- a) Information and documentation regarding requests for “no contact orders” received by the institution; information and documentation regarding the issuance of “no contact orders” by the institution; and information and documentation regarding requests for, and issuance of, modification of “no contact orders,” including copies of all “no contact orders” issued since the beginning of the academic year 2016.

Obligation to Determine a Continuing Threat (section 6444)

- a) Information and documentation concerning the manner and method utilized by the institution to determine whether a student is determined to present a continuing threat to the health and safety of the community.

Interim Measures & Accommodations (6444)

- a) Information and documentation regarding any and all students who were subjected to interim suspension pending the outcome of a judicial or conduct process; information and documentation regarding any and all requests for modification of interim suspensions; and information and documentation regarding any requests for review of interim suspensions since the beginning of the 2016 academic year.
- b) Information and documentation regarding the institution’s provision of information to its student body related to the availability of interim measures and accommodations such as a change in academic schedule, housing, employment, transportation or other arrangements in order to ensure safety, prevent retaliation and avoid an ongoing hostile environment; as well as any and all requests for review of the need for and terms of any such interim measures or accommodations since the beginning of the 2016 academic year.
- c) Information and documentation regarding the institution’s notification and provision to all students of the rights afforded all students pursuant to Education Law Article 129-B(6444)(5).

Transcript Notations (section 6444)

- a) A copy of the institution’s published policy on transcript notations and appeals seeking removal of a transcript notation for a suspension, including information and documentation regarding the manner and method in which the institution published the policy.
- b) *Copies of any and all records related to reports received by the institution of incidents of Sexual Assault, Domestic Violence, Dating Violence and Stalking since the beginning of the academic year 2016.

- c) *Copies of any and all records regarding judicial/conduct hearings held by the institution related to reports of Sexual Assault, Domestic Violence, Dating Violence and Stalking since the beginning of the academic year 2016. No personally identifiable information of any individual is being requested by this paragraph. Schools are asked to create a document in summary/narrative form indicating the actions taken in response to the report.

Memorandums of Understanding (section 6444)

- a) Copies of any and all Memorandums of Understanding that the institution has entered into with hospitals and community based organizations, including rape crisis centers and Domestic Violence shelters, since the beginning of the academic year 2016.

Campus Climate Assessments (section 6445)

- a) Copies of any and all Campus Climate Assessments the institution has administered, and the results thereof, since the beginning of the academic year 2016.

Student Onboarding & Ongoing Education (section 6447)

- a) Information and documentation regarding the institution's student onboarding and ongoing education campaign to educate members of the institution's community about Domestic Violence, Dating Violence, Stalking and Sexual Assault.
- b) Information and documentation regarding the manner and method by which the institution ensures that students receive this training.

**OCS took great care to ensure that this review was done in a manner sensitive to the identification of reporting individuals, victims, and respondents. No personally identifiable information of any individual was submitted in response to paragraphs 9-11. Schools were asked to create a document in summary/narrative form indicating the following information regarding the report:*

- *Allegation(s);*
- *Who the incident was initially reported to;*
- *Was the report referred to State Police, local law enforcement, or campus security;*
- *Was victim offered a Sexual Assault forensic exam, did the victim receive an exam, and was the exam performed on-campus or by off-campus provider;*
- *Was victim referred to health services, counseling services, and/or a rape crisis center;*
- *Was a "no contact" order issued;*
- *Who conducted campus investigation;*
- *What were findings of campus investigation;*
- *Did a disciplinary hearing occur;*
- *What was finding of disciplinary hearing;*
- *What was disciplinary outcome (no punishment, suspension, expulsion);*

- *Did a student found responsible for violation of code of conduct receive notation on transcript; and*
- *Any other information the institution believes would be helpful in describing the process followed in investigating and making a determination regarding the incident.*

Phase II

Phase II of this review – beginning in the fall of 2017 - will be an in-depth review of campus practices beyond documentation. It will include specific review of campuses identified as potentially problematic during Phase I review, and those identified in complaints indicating potential non-compliance. The schools identified as “Non-compliant” in Phase I will undergo an additional level of scrutiny. Those in the “Largely Compliant – Corrective Action Needed” category will receive additional follow-up to ensure that the shortcomings identified in Phase I are identified and addressed.

During this Phase, as with Phase I, OCS will work alongside advocacy groups to identify deficiencies that may be present as a widespread pattern and those specific to individual institutions and cases, to identify best practices for approach to sensitivity of personally identifiable information, and will take all necessary steps to protect the identities and personal information of reporting individuals, witnesses, victims, and respondents.

Phase II will involve review of specific cases, including campus handling patterns and identification of inconsistencies between stated practice and actual application of the law. Among other actions, the Phase II review will involve:

- Interviews with students involved in the institution conduct process as a result of an reported incident of Sexual Assault, Dating Violence, Domestic Violence or Stalking;
- Interviews of institution personnel involved in receiving a report thereof;
- Interviews of institution personnel involved in the investigation thereof;
- Interviews of institution personnel involved in hearings held as a result of a report being received and interviews of institution personnel related to sanctions imposed and the basis for those decisions;
- Potential interviews with students who have reported an incident of Sexual Assault, Dating Violence, Domestic Violence or Stalking related to the institution’s response; and
- Review of hearing transcripts, reports and other documentation necessary to determine actions taken by institutions.

SCHOOL RESPONSES

OCS requested documentation from 244 institutions of higher education in New York State. Information from 240 schools was received and processed.

24 institutions responded with incomplete information and an additional 4 institutions failed to respond at all. These institutions will be required to make a good faith effort to submit any missing information immediately and no later than 60 days of this review, or risk forfeiture of state aid or assistance.

EVALUATION

Led by the OCS, evaluation of compliance documents submitted by the institutions was conducted by a trained team of reviewers. The reviewers used a uniform assessment of compliance and evaluation method for evaluating documents across elements required under the law. The uniform assessment covered all required areas of Article 129-B capable of being evaluated through documentation.

FINDINGS

Through use of a scoring methodology and categorization system, the review found compliance on most of the required elements. In all, there were 95 schools (38.9%) found to be compliant, while only 29 institutions (11.9%) were found to be non-compliant.

The largest number of schools, 120 (49.2%), presented minor issues that must be addressed to achieve compliance.

Based upon scoring of the information provided for each element, each institution was placed into one of three categories as to their level of overall compliance with the elements of the law. The categories were as follows:

<u>Compliant</u>	Meets or Exceeds requirements
<u>Significantly Compliant</u>	Meets with most requirements, some requirements outstanding, corrective action needed
<u>Non-Compliant</u>	Fails to meet many requirements, substantial corrective action needed

The information provided by each institution was evaluated and scored within several key areas to arrive at the compliance category determination. Evaluators looked for the presence of documentation satisfying the elements of the law, as were requested. A detailed explanation of the compliance measurements and findings follows below.²

² These findings are the result of review of the information submitted by the institutions. This review is preliminary, and was conducted as a snapshot based only upon information provided to the Office of Campus Safety by the institution. OCS made every effort to contact institutions to supplement missing information prior to the submission deadline and to clarify submission materials. Moving forward, OCS will continue to update its records to reflect compliance by individual institutions upon submission of required documentation.

Code of Conduct – Ed.L. Secs. 6439-6443

Accessibility/availability of information – on website/on campus: Education Law Article 129-B requires that all mandated rules and policies are posted on the institution’s website in a manner that is easily accessible to its students and public. The review revealed that in many cases the legally required rules and policies were not easily located on an institution’s website.

Missing information; Inconsistent/Contradictory Information: Education Law Article 129-B requires every institution to adopt specific policies and procedures, including specific statutory language related to the adoption of a universal definition of Affirmative Consent; a universal policy for Alcohol and Drug Use Amnesty; a Students' Bill of Rights; the right to choose to report to University Police or Campus Security, local law enforcement, or the State Police, or to choose not to report; and the right to be protected from retaliation, among other things. The review found that several New York colleges and universities failed to fully incorporate the legally mandated policies, procedures and or statutory language into their Code of Conduct, policies and procedures. In the alternative, in some instances it was discovered that while the institution did fully incorporate the required language, policies and procedures they also maintained other policies/procedures that conflicted with the legally mandated requirements.

Inclusion of required elements pursuant to 129-B	Compliant	Noncompliant	% Compliant
Affirmative Consent (6441)	218	26	89%
6441(2)(A) – (F)	201	43	82%
Drug/Alcohol Amnesty Policy	207	37	85%
Student Bill of Rights (6443) – all elements of incorporated	202	42	83%
Verification of posting and dissemination to student population	203	41	83%
Accessibility on website	200	44	82%

Rights of Reporting Individuals – Ed.L. Sec. 6444(1)(A) – (I)

Option of a Hearing; Option of Mediation/Informal Resolution: Education Law Article 129-B provides that every student is afforded the right to offer evidence during an investigation and to present evidence and testimony at a hearing, where appropriate, as well as access to at least one level of appeal of a determination before a panel. The review found that many New York colleges and universities do not offer a hearing to their students who report, or are accused of, Sexual Assault, Domestic Violence, Dating Violence or Stalking; and oftentimes the appeals were heard by a single individual rather than a panel.

Under the law, students who report or are accused of Sexual Assault, Dating Violence, Domestic Violence and Stalking must be provided with process that includes proper notice and the opportunity to offer evidence and witnesses which are considered by the panel fully and fairly, as well as a proper appeal before a panel. While the law does not require institutions to hold hearings, OCS will work with New York colleges and institutions to implement this suggested aspect of the law to ensure students experience a fair, unbiased and impartial experience. Moreover, failure to offer an appeal panel, versus a singular individual, is not in compliance with the law.

Further, several institutions offer the option of "mediation" or some other "informal" process to resolve violations of the Code of Conduct. While most schools indicated that this process was not an option in instances of "sexual violence," it was an option in instances of "sexual misconduct." This is problematic for a number of reasons including the varying definitions that schools adopted related to those terms. Moreover, for many victims the prospect of engaging in mediation, or some other informal process, with an individual who one has accused of "sexual misconduct" can act as a barrier to reporting such misconduct. The Office of Campus Safety will work with New York colleges and institutions to eradicate the use of mediation or other informal processes when dealing with reports of Sexual Assault, Dating Violence, Domestic Violence and/or Stalking. In addition to the above concerns, a few institutions have failed to adopt significant policies and procedures required by the law. Several have retained out of date policies and have failed to adopt all or most of the policies and procedures required by the Enough is Enough law.

Content – inclusion of required elements pursuant to 129-B	Compliant	Noncompliant	% Compliant
6444 (1)(A) – (I)- rights of reporting individual	188	56	77%
6444 (3)-availability of medical services	201	43	82%
6444 (5)-student conduct procedure rights	187	57	77%

Reporting to Law Enforcement: State Police, local law enforcement, and campus safety personnel work closely with campus communities in investigating reports of sexual assault. The law is very clear that at the initial contact between the reporting individual and school employees, a reporting individual is to be informed of their right to report to State Police, local law enforcement, or campus safety, or not to report. The law goes so far as to dictate the verbiage of this notification that must be present in an institution’s written policies and procedures:

"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."

A fair number of schools have met this requirement, however 44 institutions have not met this basic measure. While an individual always has the right to not report, informing them of their right to pursue criminal action is vital to protecting their right to make an informed decision, and failing to do so can only be seen as willful.

In several cases, it was found that while an option to report to law enforcement was presented, an option to report to the State Police was omitted from the notice. This omission not only deprives reporting individuals of their full rights under the law, but creates the appearance that institutions are attempting to avoid scrutiny by the highly trained investigators of the New York State Police.

The institutions that are deficient on this measure will be prioritized for follow-up. Also, during Phase II of the review, scrutiny will be given to cases at these schools in order to identify incidents where reporting students may not have been informed of this right.

Required Policy	Compliant	Noncompliant	% Compliant
6444 (2)-notify of option to report to law enforcement	201	43	82%

Confidentiality and Privacy – Ed.L. Sec. 6446

Definition of Confidentiality versus Privacy - differences between; sufficient access to confidential resources: Given the fact that sexual offenses are vastly underreported, it is important that New York colleges and universities make every effort to remove barriers that hinder reporting. One of the most significant barriers to reporting Sexual Assault, Domestic Violence, Dating Violence and/or Stalking is the inability to report assaults confidentially. Education Law Article 129-B requires that every institution ensure that reporting individuals are provided with information regarding confidential resources they may contact to report their experience; a plain language explanation of confidentiality; information about how the institution

will weigh a request for confidentiality and respond to such a request; and information about existing and available methods to anonymously disclose their experience.

A number of schools failed to clearly demonstrate the difference between confidentiality and privacy and many schools lacked sufficient on-campus confidential resources. While there is a delicate balance colleges and universities must strike between offering confidentiality to their students and meeting their responsibility to investigate reports of Sexual Assault, Domestic Violence, Dating Violence, and Stalking, there is concern that the lack of sufficient on-campus confidential resources may act as a deterrent to reporting. OCS will work with New York colleges and universities to ensure that they are meeting their obligation to investigate reports of Sexual Assault, Domestic Violence, Dating Violence and Stalking while also providing sufficient confidential resources to their students.

Required Policy	Compliant	Noncompliant	% Compliant
Notification to students of which personnel can offer confidentiality versus privacy	212	32	87%
Plain language explanation of confidentiality	198	46	81%
6446(1)(D) – (G)-general information available to students	174	70	71%
6446(3)-notification of investigation to reporting individuals	202	42	83%
6446 (4)-consent from reporting individuals prior to investigation	192	52	79%

“No contact” orders – Ed.L. Sec. 6444(4)(A)

Of the 240 schools received, 115 indicated that they had issued at least one “no contact” order in response to a reported incident of sexual assault/violence. This order is available at the request of a reporting individual and is subject to evidentiary review.

Determining a continuing threat – Ed.L. Sec. 6444

Institutions are required to maintain policies and procedures to determine whether an individual accused in a sexual assault investigation constitutes a continuing threat to the health and safety of the community, and subject that person to interim suspension pending the outcome

of the conduct process if necessary. It was found that slightly more than half of the institutions had such a policy, but of those institutions, virtually all were adequate.

It is important that school administrators, students, and employees understand what such a determination entails, and have a published policy to inform and guide such decisions.

	Compliant	Noncompliant	% Compliant
Does the Institution have a published policy	156	88	64%
Is the policy adequate	146	98	60%

Interim Measures & Accommodations – Ed.L. Sec. 6444(4)(H)

Interim measures and accommodations to students’ housing, academic, transportation, employment and other areas are required to be provided, so long as they are reasonable and available. Students – both reporting and accused – are entitled to prompt review of any such request and to submit evidence in support of such a request. This requirement ensures that a campus does not become a hostile environment for either of the parties involved, and that safety is protected.

Many schools lack any policies allowing submission of evidence in support of such accommodation requests, making it possible that a decision could be made without all of the available information, which may threaten student safety. Institutions must work to adopt policies that are consistent with the law, which protect students from being subjected to an ongoing threatening or hostile environment on campus.

	Compliant	Noncompliant	% Compliant
Students allowed to submit evidence in support of accommodation request	85	159	35%

An additional element of interim measures is the allowance of interim suspension of students deemed to be an ongoing threat to health or safety. 83 schools reported issuing at least one interim suspension, while 61 of those schools reported reviewing a request for a modification of an interim suspension.

Transcript Notations – Ed.L. Sec. 6444(6)

This element of the law makes New York State one of only two states (Virginia) to require an indicator warning other institutions of students found responsible for a crime of violence (or leaving school as opposed to facing the disciplinary process for such accusation). This important element ensures that other institutions are aware of the student’s past violation of another school’s Code of Conduct.

	Compliant	Noncompliant	% Compliant
School has published policy regarding transcript notations	205	39	84%

MOUs – Ed.L. Sec. 6444(7&8)

Lack of MOUS/Adequate services available to students: Education Law Article 129-B requires institutions that lack appropriate on-campus resources or services to enter into agreements or collaborative partnerships, to the extent practicable, with existing community based organizations, including rape crisis centers and Domestic Violence shelters and assistance organizations, in order to enable institutions to refer students or to make services available to students. Such services include access to a Sexual Assault Forensic Examination, counseling, health, mental health, victim advocacy and legal assistance. The review found that many New York State colleges or universities lacked sufficient on-campus resources and did not enter into agreements with community based organizations, and that no information was provided to demonstrate why this was impracticable.

It is widely accepted that appropriate, good quality care should be available to all students who have been victims of sexual violence. A victim’s willingness to seek care might be heightened or hampered by perceptions about the accessibility, availability and awareness of resources on and off campus. To that end, institutions must ensure that reporting individuals have sufficient resources available to them and the requisite knowledge about how to access them.

	Compliant	Noncompliant	% Compliant
MOU and/or Adequate services available to students	167	77	68%

SAFE Exams: The law requires institutions to provide access to a Sexual Assault Forensic Examination (SAFE exam), to the extent practicable, by employing a sexual assault nurse examiner on campus or entering into an MOU with an outside entity to provide such services. This area showed a high level of non-compliance among institutions, with only 55% indicating that such service was available to students. Schools must show a commitment to correcting this deficiency. OCS will work with institutions and supporting organizations to determine the most practical method of ensuring availability of this critical service.

	Compliant	Noncompliant	% Compliant
Sexual Assault nurse examiner on campus or MOU	134	110	55%

Campus Climate Assessments – Ed.L. Sec. 6445

Institutions are required to conduct a campus climate assessment at least every other year to determine students’ general awareness, knowledge of, and experience with Article 129-B. The results of this assessment will assist colleges and universities with training, information, and service delivery to ensure that students know their rights and responsibilities under the law, and feel that the school is applying the law appropriately.

While the majority of institutions conducted surveys in 2016 meeting the legal requirements, there are still many schools outstanding, indicating that surveys should be conducted at those institutions in 2017. Additionally, a number of institutions failed to post survey results to the school’s website as required by the law, which raises issues of transparency.

Campus Climate Assessment Conducted	163 Schools		
	Compliant	Noncompliant	% Compliant
Required areas of (6445)(2) covered by assessment	150	13	92%
Results are posted to website	89	74	55%

Training – Ed.L. Sec. 6447

Training Consistency: Education Law Article 129-B requires institutions to employ a comprehensive student onboarding and ongoing education campaign to inform students about Domestic Violence, Dating Violence, Stalking and Sexual Assault. The law mandates that first year and transfer students receive training on the following topics as part of their onboarding to the institution:

- The institution’s prohibition against sexual and interpersonal violence, the availability of resources to victims and survivors of such violence and the institution’s responsibility to take administrative and conduct action related to reports received of such violence that fall within the Institution’s jurisdiction;
- Plain language definitions of Consent, Sexual Assault, Dating Violence, Domestic Violence, Stalking, Confidentiality and Privacy;
- All institution policies apply equally to all students regardless of sexual orientation, gender identity or gender expression;
- The role of the Title 9 coordinator, university police/campus security and other institution offices that address Sexual Assault, Dating Violence, Domestic Violence and Stalking prevention and response;
- Awareness of violence and its impact;
- Bystander intervention and the importance of taking action to prevent violence when one can safely do so;
- Risk assessment and reduction;
- Consequences and sanctions for individuals who commit Code of Conduct violations and/or crimes related to Sexual Assault, Dating Violence, Domestic Violence and Stalking.

The law further requires that institutions use multiple methods to educate students and ensure that specific groups such as international students; student employees; officers of student organizations; student athletes; online and distance education students; and students that are members of groups that are identified as high risk populations receive this training. Additionally, the law requires institutions to provide annual training to personnel responsible for the investigation and adjudication of reports of sexual violence. This training must cover proper investigative techniques; the effects of trauma; impartiality; and the rights of the accused.

A comprehensive student onboarding and ongoing education campaign, and a properly trained and educated staff is integral to preventing sexual violence on college and university campuses.

The review revealed that New York State colleges and universities have responded to these requirements in varying ways. Some institutions’ training and education were found to be inadequate. While, other institutions have developed an education regimen in accordance with

the law. OCS will follow up with the institutions that are lacking in this area with the goal of ensuring that all New York State colleges and universities comprehend the importance of a thorough, wide spread, all-encompassing, ongoing training and education program related to sexual violence awareness and prevention.

Verification of receipt/completion of training by students: The review found that some institutions simply made training and education programs available to students – but failed to ensure that the students actually accessed the programs or completed them. This review also found that many institutions required a modicum of training and education, while the rest of the required educational programming was optional. OCS will follow up with colleges and universities to ensure that institutions are in fact mandating – and students are actually receiving and completing – a broad based, comprehensive, and ongoing training and education campaign related to Sexual Assault, Domestic Violence, Dating Violence and Stalking.

	Compliant	Noncompliant	% Compliant
Institution conducted ongoing education campaign related to 129-B	198	46	81%
Varying methods of training	193	51	79%
Required topics of (6447)(2) covered	164	80	67%
Required students received training (6447)(3)(6)	163	81	67%
Provision of training to institution personnel as required pursuant to 129-B	117	127	48%

Posting of rules/policies to institution website – Ed.L. Secs.

As indicated within previous sections, while the majority of schools were able to demonstrate the posting of required materials on their website, a number of those institutions still have not made this information easy to access for students, parents, or the general public. The information was difficult to locate online. One of the elements of the Enough is Enough law is that the institution’s rules and policies be posted in a manner “easily accessible” to the public.

The fact that there remain a number of institutions unable to demonstrate the presence of this basic information is in some ways tied to the existence of the underlying information, but many others simply need to make this information more easily accessible.

	Compliant	Noncompliant	% Compliant
Code of Conduct	200	44	82%
Links/information on how to file a report	185	59	76%
Options for confidential disclosure	181	63	74%
Campus Climate Assessments results	89 (of 163)	74 (of 163)	55%

CONCLUSION AND NEXT STEPS

The Enough is Enough law was put into place to protect students. Statistics show that sexual assault and dating violence are at extremely high levels on college campuses, in some subgroups exceeding rates for individuals outside of college. This is a serious problem that requires serious action and attention to detail. The Governor and the Legislature adopted specific requirements in the law to address this issue on college and university campuses.

It is clear from this review that many schools in New York State have taken this law and this issue seriously. It is also clear that compliance with the law, and capacity to protect students, still needs improvement on a number of campuses. While most institutions in the state are meeting the majority of requirements for each element of the law, many schools have not yet accomplished compliance – more than two years after the law went into effect. This is unacceptable.

Many of these deficiencies may be remedied with skilled guidance from OCS. Others will require considerable work to put into place. OCS will direct these schools to formulate action plans and achieve compliance within 60 days. OCS will also ensure that the law is enforced and that schools that falsely certify their compliance with the law are held accountable.

OCS and the team of reviewers will continue to follow-up with the institutions to address shortcomings and implement the appropriate procedures on all campuses. Additionally, OCS will begin with Phase II of this review, in which they will conduct an in-depth review of campus procedures used in reports of Sexual Assault. The results of Phase II will be made public as they are found.

For questions about this report, please contact the New York State Office of Campus Safety at (518) 457-5999 or Stacey.Hamilton@dcjs.ny.gov