



FIVE TOWNS COLLEGE

305 North Service Road, Dix Hills, NY 11746-5871 | www.ftc.edu

**CAMPUS GUIDE TO
NEW YORK STATE
EDUCATION LAW**

**ENOUGH IS ENOUGH:
WHAT YOU NEED TO KNOW**

Edition 2018

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Welcome to Five Towns College! While your time on campus should be all about academics and campus life, as young adults there may arise situations where you need to know, understand, and take action if violations of institutional policies occur or if you are a victim or witness of sexual assault or related misconduct. Sexual misconduct, including sexual assault, dating violence, domestic violence, and stalking is unacceptable on college campuses and was directly addressed by New York's Governor Andrew Cuomo in 2015 when a law called *Enough is Enough* was adopted and passed.

As new or returning students to campus, please be sure to read this *Campus Guide* and familiarize yourself with the terminology, definitions, differences between privacy and confidentiality, where to get help, reporting options and guidelines, interim measures and accommodations taken to assure your safety, situations where institutions must act whether you consent or not, and other important information. This *Campus Guide* highlights main concepts but the full statute is attached as a resource for you. There are regularly scheduled workshops and programs throughout each semester for all students, faculty and staff so be sure to attend those, too. And, if you have questions, ask!

FOR IMMEDIATE HELP:

To report a sexual assault on a New York college campus to the State Police, call the dedicated 24-hour hotline at 1-844-845-7269. In an emergency, call 911. For confidential support resources, call the New York State Domestic and Sexual Violence Hotline at 1-800-942-6906. In New York City, call 1-800-621-HOPE (4673) or dial 311.

What is *Enough is Enough*?

Governor Andrew Cuomo signed NYS *Enough is Enough* legislation in July 2015. This is a clear and deliberate law - one of the toughest in the country- intended to fight against sexual assault on college campuses. By standing up and saying "Enough is Enough," NYS has made a clear and bold statement that sexual violence is a crime, and students can be assured they have a right to have it investigated and prosecuted as one. Five Towns College adopts and fully incorporates the provisions of the New York State law, *Enough is Enough*.

How does it affect me?

As a college student in NYS, Governor Cuomo is determined to stamp out sexual assault on campuses of higher education institutions. Hopefully, your college experience will be filled with great academic success and progress. Higher education professionals, including student affairs professionals and professionals in the Counseling Center are trained in assisting young adults through time with social, emotional and mental health concerns. On occasion, students hear about violations of *Codes of Conduct* or unfortunate events as a result of sexual assault, dating violence, domestic violence, stalking or more. This law is intended to protect victims, reporting individuals, and the rights of respondents with policies and due process that help to enforce the law. Further, students may find themselves in the position of a bystander and would be afforded certain protections under this law that they should be educated about as well.

What is consent?

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

What are some other important definitions to know?

Title IX Coordinator shall mean the Title IX Coordinator and/or his or her designee(s).

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

Code of Conduct shall mean the written policies of the College governing student behavior, rights, and responsibilities while such student is matriculated in the institution.

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

Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate institution officials.

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

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

Reporting Individual shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term to reference an individual who brings forth a report of a violation.

Sexual Activity shall have the same meaning as "sexual act" and "sexual contact" as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246 (3). To determine when affirmative consent is required prior to sexual activity, the definition of sexual activity refers to 18 U.S.C. 2246(2)-(3), it states:

(2) The term "sexual act" means:

1. contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

2. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
3. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
4. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(3) The term “sexual contact” means:-

1. the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

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

What are the meanings of . . . ?

Domestic Violence is defined as violence committed by a current or former spouse of the student, by someone who is or has cohabited with the student as a spouse, by someone with whom the student has a child, by others to whom the student is related by consanguinity (blood) or affinity (marriage), or by unrelated persons who are (or have been in the past) continually living in the same household.

Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the student. The existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

Examples of domestic and dating violence include:

- Slapping, kicking, pinching, biting, pulling hair or punching a girlfriend.
- Threatening to hit, harm, or use a weapon on a boyfriend or a boyfriend’s family.
- Pushing, grabbing or choking an intimate partner.
- Physically restraining a spouse.
- Burning an intimate partner.
- Hurting or threatening to hurt the pet of a boyfriend.

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress. Stalking also includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Examples of stalking include:

- Constantly following a student
- Repeatedly appearing at the student's home, place of business, vehicle or classroom for no legitimate purpose
- Leaving unwanted messages, objects, or gifts at the student's home, place of business, vehicle, or classroom.

Sexual Assault consists of any of the following:

- *Non-Consensual Sexual Contact*, which is defined as any intentional sexual touching or fondling either directly or through the clothing, of a person's genitalia, anus, groin, breast, inner thigh or buttocks without Affirmative Consent. Non-Consensual Sexual Contact also includes an individual making a person touch him or her with, or on, any of these body parts.
- *Non-Consensual Sexual Intercourse*, which is defined as any sexual penetration (anal, oral, or vaginal), however slight, with any object or body part, without Affirmative Consent.

What is the College's policy on alcohol and drug use amnesty?

The health and safety of every student at Five Towns College is of utmost importance. Five Towns College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct.

Five Towns College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Five Towns College officials or law enforcement will not be subject to *Five Towns College Code of Conduct* action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault. Further, depending on the facts of any incident, the College may provide amnesty in additional circumstances.

What is the Students' Bill of Rights?

All students have the right to:

- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution (Note: Students have three options: (1) notify proper law enforcement authorities, including on-campus and local police; (2) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and (3) decline to notify such authorities. This is required under the Clery Act, 20 U.S.C. section 1092 (f)(8)(B)(iii)(III)(aa)-(cc) and institutions must be neutral in

providing these options while reporting individuals should control their own decision-making.);

- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.”

What are my rights if I am a reporting individual?

Should you find yourself in a situation that may fall under the *Enough is Enough* statute, it is important that you review section 6444(A)-(I). In part, reporting individuals have the right to:

- Notify College Public Safety or campus security, local law enforcement, and/or state police;
- Have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney.
- Such official shall also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and shall inform the reporting individual of other reporting options;
- Disclose confidentially the incident to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals;
- Disclose confidentially the incident and obtain services from the state or local government;
- Disclose the incident to institution representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals;

- File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the title ix coordinator and other appropriate institution representatives for information and assistance. Reports shall be investigated in accordance with institution policy and a reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy;
- Disclose, if the accused is an employee of the institution, the incident to the institution's human resources authority or the right to request that a confidential or private employee assist in reporting to the appropriate human resources authority;
- Receive assistance from appropriate institution representatives in initiating legal proceedings in family court or civil court; and
- Withdraw a complaint or involvement from the institution process at any time.

At the first instance of disclosure to an institution representative, be presented with the following information: “You have the right to make a report to the Five Towns College Public Safety Office; 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.”

Is there a difference between confidentiality and privacy? They sound like the same thing.

This is a very important question.

Confidentiality is the highest form of keeping information between the person sharing the information and the person receiving it. The duty of confidentiality follows legal statute and is similar to the confidentiality expected from one’s clergy, psychologist, licensed mental healthcare providers, or lawyer. On a college campus, this type of confidentiality can be found in The Counseling Center from trained and educated mental health professionals.

Privacy on the other hand is a slightly lower form of keeping information between the person sharing the info and the person receiving the info. Under the Enough is Enough law, higher education professionals are trained to only share information as necessary with the professionals who need to know for administrative purposes. This is a real difference that students need to understand before they share information about an occurrence/event. But, always try to consider your health and well being first. Take care of your physical and emotional health.

Even Five Towns College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

Therefore, read, think, and ask College staff and professionals to explain so if you ever need to report, your choice is intentional. College faculty and staff are mandated reporters. This means a report to the College’s Title IX Coordinator is required.

So what do I do first if something happens?

Your health and welfare are of paramount importance. You should **seek immediate medical attention if you are injured** and know that there are *Counseling resources* available 24/7 that will assist you.

On campus, for **confidential resources**, please contact:

- The Counseling Center at (631) 656-3191
- 24/7 Confidential Resources located in the [Student Handbook](#) p. 51-53:

The *FTC Public Safety Office* issues vouchers for taxi service, if needed. So students do not need to worry about transportation to hospitals or medical providers.

Other offices to contact that are **private resources** include:

- FTC Public Safety Office (631) 656-2196
- Title IX Coordinator (631) 656-2189
- Dean of Students (631) 656-2102
- Director of Residence Life (631) 656-2126
- Director of Student Activities (631) 656- 2151

Remember, you must try to think about reporting options of confidentiality or privacy. And, there is also an option not to report. These decisions are important to you.

How do I know which college personnel can keep my information confidential or private?

As stated, the Counseling Center and its resources are bound under the law to keep your information confidential. Other than that, the Title IX Coordinator, Title IX Deputies listed here: <https://www.ftc.edu/title-ix/> and all other College faculty and staff, including Residence Life Staff will keep your information as private as practical. They are mandated to report though and you must keep that in mind when deciding whom to speak to first.

What happens if I make a report and, then, change my mind?

Once a report is made, the college is obliged to initiate an investigation. However, if you do not consent or if you change your mind and want to withdraw your report, there are a few exceptions where the college is obliged to investigate nonetheless. This has to do with continuous or ongoing threats to the campus environment. A copy of the College's *Title IX: Intake Worksheet* is attached to this *Campus Guide* for you to review and become familiar with the questions to be answered should you need to report. Also, read further to learn about the six exceptions where the College is obliged to investigate even if you do not consent.

What is the College's process of assessing whether an ongoing or continuous threat exists?

The FTC Public Safety and Dean of Students offices receive digital and hardcopies of all *Institutional Disciplinary Committee Decision Letters*. The Public Safety Office keeps written records of any/all Incident Reports that occur on campus. This form is generated when there

are violations of institutional policy, the Code of Conduct, or any other reportable events on campus. This ensures that an accurate institutional record is kept and that the Director of Public Safety has the ability to go back and take notice of repeated offenders and individuals whose conduct has previously violated the Code of Conduct, including, for instance, those who may be on disciplinary probation.

Once an Incident Report is made and concerns a current student, the Director of Public Safety will meet with the Dean of Students to review any relevant Disciplinary Committee decision letter to assess and determine if any students are involved in repeated incidents, whether disciplinary letters have been issued that placed students on disciplinary probation, and the nature of the incident i.e. violent or non-violent, and other factors listed below. Together with other institutional representatives, a determination is made whether the facts warrant investigation if consent is not given due to overriding factors. While the institution would seek consent from reporting individuals prior to conducting an investigation, declining to consent to an investigation shall be honored unless the institution determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community. For more information, go to <https://www.ftc.edu/options-confidential-disclosure-section-6446-2/>

How does the college assess the existence of an ongoing threat to the health and safety of the campus community once it receives a report from a student who was a victim of sexual misconduct by another student?

It is the institution's policy to have the consent of a reporting individual prior to conducting an investigation. However, there are some instances where the institution must investigate, whether consent is given or not, or withdrawn or if there is a change of mind. This decision to investigate when there is no consent to do so, exists when one or more of these six factors are present:

1. Whether the accused has a history of violent behavior or is a repeat offender (the nature of the allegation);
2. whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior (what the subsequent behavior after the allegation is- e.g. pattern of behavior, recurring behavior);
3. the increased risk that the accused will commit additional acts of violence;
4. whether the accused used a weapon or force;
5. whether the reporting individual is a minor; and
6. whether the institution possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

What interim measures and accommodations can be made to assure my safety if I report?

To insure that you are safe from further harm, some of the interim measures and accommodations that the institution can take include:

- the issuance of a “No Contact” order so that the respondent must stay away from the victim or reporting individual;
- issuing interim suspensions pending a hearing;
- a change in academic course schedules or deadlines, in certain instances;
- a change in housing such as moving to any other available room or residence hall;
- a change in employment schedule, if needed;
- transportation assistance if reasonable, in certain instances;
- a referral to counseling and health services; or
- assistance with reporting incidents to local police or prosecutors; or
- any other reasonable arrangements requested in order to help ensure safety, prevent retaliation and avoid an ongoing hostile environment.

Both the accused or respondent and the reporting individual shall, upon request be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects him or her, and shall be allowed to submit evidence in support of his or her request.

What information is reviewed regarding students subjected to interim suspension?

Both the accused or respondent and the reporting individual shall, upon request be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of his or her request which may include proof of counseling, remorse, apology, and/or other relevant documentation for a change in circumstances. See Section 6444 (4) (H).

Does the institution consider requests for modification of interim suspensions? Are students permitted to submit evidence in support?

As an institution of higher education, the College respects the proposition that students may learn from mistakes and become better and more mature adults. Thus, the institution will permit students subject to interim suspensions to submit evidence worthy of reconsideration. These requests would go to the Dean of Students office with supporting documentation. Students should be their best advocates but the overriding concern is always that the campus is safe and secure for all of its constituents and interim suspensions issued to achieve this will not be reversed absent compelling documentary evidence.

What is the institution’s policy about notating student transcripts about student conduct under NYS Education Law, Article 129-B?

The College’s policy is included in the College Catalog Addendum and can be found here: <https://www.ftc.edu/wp-content/uploads/2018/05/CATALOG%20ADDENDA.pdf>

Transcript Notation Policy

Pursuant to New York State Education Law Article 129B, §644, for crimes of violence, including, but not limited to sexual violence (defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 109 et seq.), it is the policy of Five Towns College to make a notation on the official transcripts of students found

responsible, after a conduct process, that they were “suspended after a finding of responsibility for a code of conduct violation” or were “expelled after a finding of responsibility for a code of conduct violation.”

For a student-respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, Five Towns College will make a notation on the transcript of such students that they “withdrew with conduct charges pending.”

Students and former students seeking a review of a Transcript Notation decision or seeking to appeal therefrom must adhere to the process for disciplinary appeals, as set forth in the *Five Towns College Student Handbook*. Unless such transcript notation decision is vacated, applications to have notations of “suspension” removed rest with the discretion of the College Provost or her designee; but, shall not be granted prior to one year following the conclusion of the suspension. Unless the decision is vacated, applications to have notation of “expulsion” removed shall not be granted.

Further, it is the policy of Five Towns College to publish this Transcript Notation Policy in both the College Catalog and Student Handbook.

Does the College have a Memorandum of Understanding, Agreement or Collaborative Partnership with any existing community-based organizations, including rape-crisis centers and domestic violence shelters and assistance organizations?

Although an informal relationship exists, the College is in earnest discussions with a local health care facility that also has a recognized *Sexual Assault Nurse Examiner (SANE)* who could conduct SAFE exams and provide related services i.e. counseling, health, mental health, victim advocacy and legal assistance, if needed for students. The College has proposed a draft Memorandum of Understanding with *Good Samaritan Hospital* located in West Islip, NY based upon the model MOU used by the SUNY colleges. This MOU will be posted to the *Enough is Enough* webpage.

What types of services does this healthcare provider cover?

The College is located in a dense suburban area with many emergency healthcare providers located less than 10 minutes away. In addition, the proposed MOU with Good Samaritan Hospital, a comprehensive Medical Center, will offer a *full range of medical care/treatment*. The college refers or transports students, as needed, to treatment. This includes SAFE exams conducted by a sexual assault nurse examiner who is trained in dealing with trauma related issues and for students who may be victims of sexual assault. In fact, Good Samaritan Hospital located in Islip is only 15 minutes away and exams are provided free of charge there through VIBS- a victim’s assistance organization. Public Safety office will provide transportation or taxi vouchers to assist students and transport them to healthcare or medical providers nearby.

What types of Student onboarding and ongoing education are provided? What is the manner and method for providing training? What topics will be covered?

Training and education is provided in a variety of ways at different types of presentations throughout the academic year. The topics that will be covered include:

- The institution prohibits sexual and interpersonal violence and will offer resources to any victims and survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of the institution;
- the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, consent and others;
- that these policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression;
- what the role is of the Title IX Coordinator, university police or campus security, and other relevant offices that address domestic violence, dating violence, stalking, and sexual assault prevention and response on campus is;
- understanding and recognizing the impact of violence on victims and survivors and their friends and family, and its long-term impact;
- bystander intervention and the importance of taking action to prevent violence when one can safely do so; and
- risk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations.

This may contain information about

- the dangers of drug and alcohol use, including underage drinking and binge drinking,
- involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol,
- the importance of communication with trusted friends and family whether on campus or off campus, and
- the availability of institution officials who can answer general or specific questions about risk reduction; and
- consequences and sanctions for individuals who commit these crimes and code of conduct violations.

Here are some links to websites that may help further educate individuals about risk reduction:

Center for Disease Control and Prevention – Sexual Violence: Prevention Strategies
<https://www.cdc.gov/violenceprevention/sexualviolence/prevention.html>

RAINN (Rape, Abuse & Incest National Network)
<https://www.rainn.org/>

Harvard University Office of Sexual Assault Prevention and Response
<https://osapr.harvard.edu/>

So, how do I file a report if I need to?

First, it is recommended that you take the time to review the Title IX Intake Worksheet available on the Enough is Enough webpage here: <https://www.ftc.edu/five-towns-college-enough-enough/> and be aware of what information you will be asked to provide as well as understand the circumstances when the institution may be obliged to investigate even if you change your mind or do not consent.

What are the evidentiary standards in the disciplinary, grievance, N.Y.S. Education Law, Article 129-B, Title IX of the Education Amendments of 1972, and Federal/State Penal Codes?

Students/employees should be apprised of the different standards applied to the evidence submitted in various instances by the appropriate judicial bodies when making decisions.

For *complaints, charges, or incidents* that fall under the *Five Towns College Code of Conduct* and may be general discipline or grievance matters, the preponderance of the evidence standard is applied or a more likely than not standard based on the evidence submitted.

For complaints, misconduct, or reports that may fall under the *Five Towns College Code of Conduct* and may be deemed to be either sexual harassment, sexual assault or any type of domestic violence, dating violence, stalking and/or sexual assault, the standard applied is a preponderance of the evidence standard.

For *criminal conduct, violent crimes* etc. subject to the Penal Codes, a beyond the reasonable doubt will be applied by the local, state or federal governing body but this is outside the scope of Five Towns College.

Further, students are advised that in some instances should certain conduct be deemed to be a violation of the *Code of Conduct* and be treated as a disciplinary matter, that will occur separately from any other proceeding being investigated as either a Title IX, Article 129-B violation and/or as a criminal matter subject to investigation by police or other investigation outside of the institution's disciplinary scope.

Appendix

- **FTC Title IX: Intake Sheet**
- **FTC Sexual Assault Reporting Options**

- **NYSED guidance document:**

<http://www.highered.nysed.gov/ocue/documents/Article129-BGuidance.pdf>

- **NYS Education law, Article 129-B, *Enough is Enough*:**

http://assembly.state.ny.us/leg/?default_fld=%0D%0A&bn=a8244&term=2015&Summary=Y&Text=Y



Title IX: Intake Worksheet

1. File Date: _____
2. Complainant Name: _____
Best Contact Information: _____
3. Bystander/Witness Name(s): _____
Best Contact Information: _____
4. Respondent Name: _____
Best Contact Information: _____
5. Initially Reported to (Name/Title): _____
6. Time/Date/Location of Incident(s): _____
7. Description of Conduct: _____

8. Complaints' Rights/Exceptions Explained (see page 2): Y / N
9. Consent to Investigate Given: Y / N Exception Present: Y / N
If Yes, specify by letter: _____
10. Referred to State police/Local law enforcement/Campus Security: Y / N
11. Forensic Exam Offered: Y / N Conducted: Y / N If Yes, list provider: (SANE)
12. Referred to Health Services/Counseling Services/Rape Crisis Center: Y / N
13. Recommended Interim Measures: _____

Complainants' Rights: The 4 R's

1. Report to Law Enforcement: You have the right to make a report to the College's Office of Public Safety/FTC campus security, local law enforcement, and/or state police OR Choose Not to Report;

2. Report to College: You have the right to report the incident to your institution;

3. Retaliation: You have the right to be protected by the institution from retaliation for reporting an incident; and

4. Resources: You have the right to receive assistance and resources from your institution.

EXCEPTIONS:

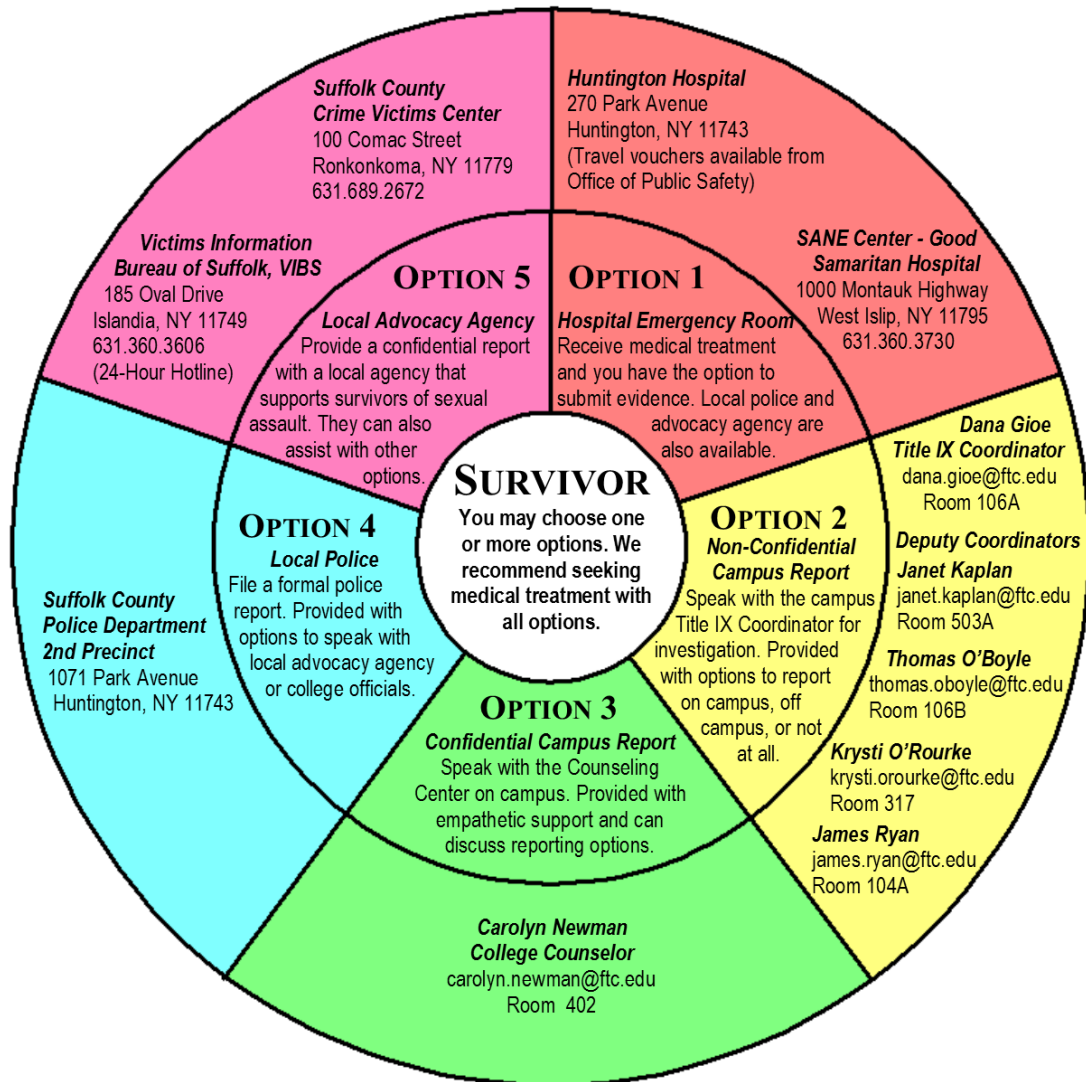
***Declining to consent to an investigation shall be honored UNLESS the institution determines in good faith that failure to investigate creates a potential risk of harm to the reporting individual or other members of the community. Factors used to determine whether to honor such a request include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- The increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor; and
- Whether the institution possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

Please note: In any of the above exceptions, the College is obliged to institute an investigation.

FIVE TOWNS COLLEGE SEXUAL ASSAULT REPORTING OPTIONS

This guide provides survivors of sexual assault with the various options and resources available to them. We encourage survivors to consider each option and to remember: all options and efforts are directed at best supporting survivors.



Here is a copy of the NYS Education law, Article 129-B, *Enough is Enough*:
http://assembly.state.ny.us/leg/?default_fld=%0D%0A&bn=a8244&term=2015&Summary=Y&Text=Y

STATE OF NEW YORK

8244

2015-2016 Regular Sessions

IN ASSEMBLY

June 14, 2015

Introduced by M. of A. GLICK, PAULIN, ARROYO, BARRETT, BARRON, BICHOTTE, BLAKE, BRENNAN, BRINDISI, BRONSON, CRESPO, CUSICK, DAVILA, ENGLE-BRIGHT, FAHY, FARRELL, GALEF, JAFFEE, KAMINSKY, LINARES, LUPARDO, McDONALD, MORELLE, MOSLEY, MOYA, OTIS, PICHARDO, PRETLOW, ROBINSON, ROSENTHAL, ROZIC, RYAN, SANTABARBARA, SCHIMEL, SEAWRIGHT, SIMON, SIMOTAS, STECK, STIRPE, THIELE, TITONE, WALKER, WEINSTEIN, WEPRIN, ZEBROWSKI -- (at request of the Governor) -- read once and referred to the Committee on Higher Education

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

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

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

3 ARTICLE 129-B

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

7 Section 6439. Definitions.

8 6440. General provisions.

9 6441. Affirmative consent to sexual activity.

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

11 6443. Students' bill of rights.

12 6444. Response to reports.

13 6445. Campus climate assessments.

14 6446. Options for confidential disclosure.

15 6447. Student onboarding and ongoing education.

1 6448. Privacy in legal challenges.
2 6449. Reporting aggregate data to the department.
3 § 6439. Definitions. As used in this article, the following terms have
4 the following meanings:
5 1. "Institution" shall mean any college or university chartered by the
6 regents or incorporated by special act of the legislature that maintains
7 a campus in New York.
8 2. "Title IX Coordinator" shall mean the Title IX Coordinator and/or
9 his or her designee or designees.
10 3. "Bystander" shall mean a person who observes a crime, impending
11 crime, conflict, potentially violent or violent behavior, or conduct
12 that is in violation of rules or policies of an institution.
13 4. "Code of conduct" shall mean the written policies adopted by an
14 institution governing student behavior, rights, and responsibilities
15 while such student is matriculated in the institution.
16 5. "Confidentiality" may be offered by an individual who is not
17 required by law to report known incidents of sexual assault or other
18 crimes to institution officials, in a manner consistent with state and
19 federal law, including but not limited to 20 U.S.C. 1092(f) and 20
20 U.S.C. 1681(a). Licensed mental health counselors, medical providers and
21 pastoral counselors are examples of institution employees who may offer
22 confidentiality.
23 6. "Privacy" may be offered by an individual when such individual is
24 unable to offer confidentiality under the law but shall still not
25 disclose information learned from a reporting individual or bystander to
26 a crime or incident more than necessary to comply with this and other
27 applicable laws, including informing appropriate institution officials.
28 Institutions may substitute another relevant term having the same mean-
29 ing, as appropriate to the policies of the institution.
30 7. "Accused" shall mean a person accused of a violation who has not
31 yet entered an institution's judicial or conduct process.
32 8. "Respondent" shall mean a person accused of a violation who has
33 entered an institution's judicial or conduct process.
34 9. "Reporting individual" shall encompass the terms victim, survivor,
35 complainant, claimant, witness with victim status, and any other term
36 used by an institution to reference an individual who brings forth a
37 report of a violation.
38 10. "Sexual activity" shall have the same meaning as "sexual act" and
39 "sexual contact" as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246(3).
40 11. "Domestic violence", "dating violence", "stalking" and "sexual
41 assault" shall be defined by each institution in its code of conduct in
42 a manner consistent with applicable federal definitions.
43 § 6440. General provisions. 1. Every institution shall:
44 a. adopt written rules implementing this article by amending its code
45 of conduct or other comparable policies;
46 b. annually file with the department on or before the first day of
47 July, beginning in two thousand sixteen, a certificate of compliance
48 with the provisions of this article; and
49 c. file a copy of all written rules and policies adopted as required
50 in this article with the department on or before the first day of July,
51 two thousand sixteen, and once every ten years thereafter, except that
52 the second filing shall coincide with the required filing under article
53 one hundred twenty-nine-A of this chapter, and continue on the same
54 cycle thereafter.
55 2. All institutional services and protections afforded to reporting
56 individuals under this article shall be available to all students and

1 applicable to conduct that has a reasonable connection to that institu-
2 tion. When such conduct involves students or employees from two or more
3 institutions, such institutions may work collaboratively to address the
4 conduct provided that such collaboration complies with the Family Educa-
5 tional Rights and Privacy Act codified at 20 U.S.C. 1232g; 34 C.F.R.
6 Part 99.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 their friends, family and acquaintances within the jurisdiction of the
2 institution; 9. Access to at least one level of appeal of a determi-
3 nation; 10. Be accompanied by an advisor of choice who may assist and
4 advise a reporting individual, accused, or respondent throughout the
5 judicial or conduct process including during all meetings and hearings
6 related to such process; and 11. Exercise civil rights and practice of
7 religion without interference by the investigative, criminal justice, or
8 judicial or conduct process of the institution."

9 § 6444. Response to reports. 1. Every institution shall ensure that
10 reporting individuals are advised of their right to:

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

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

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

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

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

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

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

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

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

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

55 3. Every institution shall ensure that reporting individuals have
56 information about resources, including intervention, mental health coun-

1 seling, and medical services, which shall include information on whether
2 such resources are available at no cost or for a fee. Every institution
3 shall also provide information on sexually transmitted infections, sexu-
4 al assault forensic examinations, and resources available through the
5 New York state office of victim services, established pursuant to
6 section six hundred twenty-two of the executive law.

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

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

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

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

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

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

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

55 g. When the accused is not a student but is a member of the insti-
56 tution's community and presents a continuing threat to the health and

1 safety of the community, to subject the accused to interim measures in
2 accordance with applicable collective bargaining agreements, employee
3 handbooks, and rules and policies of the institution;

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

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

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

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

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

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

52 ii. To a prompt response to any complaint and to have the complaint
53 investigated and adjudicated in an impartial, timely, and thorough
54 manner by individuals who receive annual training in conducting investi-
55 gations of sexual violence, the effects of trauma, impartiality, the
56 rights of the respondent, including the right to a presumption that the

1 respondent is "not responsible" until a finding of responsibility is
2 made pursuant to the provisions of this article and the institution's
3 policies and procedures, and other issues including, but not limited to
4 domestic violence, dating violence, stalking or sexual assault.
5 iii. To an investigation and process that is fair, impartial and
6 provides a meaningful opportunity to be heard, and that is not conducted
7 by individuals with a conflict of interest.
8 iv. To have the institution's judicial or conduct process run concur-
9 rently with a criminal justice investigation and proceeding, except for
10 temporary delays as requested by external municipal entities while law
11 enforcement gathers evidence. Temporary delays should not last more than
12 ten days except when law enforcement specifically requests and justifies
13 a longer delay.
14 v. To review and present available evidence in the case file, or
15 otherwise in the possession or control of the institution, and relevant
16 to the conduct case, consistent with institution policies and proce-
17 dures.
18 vi. To exclude their own prior sexual history with persons other than
19 the other party in the judicial or conduct process or their own mental
20 health diagnosis and/or treatment from admittance in the institution
21 disciplinary stage that determines responsibility. Past findings of
22 domestic violence, dating violence, stalking, or sexual assault may be
23 admissible in the disciplinary stage that determines sanction.
24 vii. To receive written or electronic notice, provided in advance
25 pursuant to the college or university policy and reasonable under the
26 circumstances, of any meeting they are required to or are eligible to
27 attend, of the specific rule, rules or laws alleged to have been
28 violated and in what manner, and the sanction or sanctions that may be
29 imposed on the respondent based upon the outcome of the judicial or
30 conduct process, at which time the designated hearing or investigatory
31 officer or panel shall provide a written statement detailing the factual
32 findings supporting the determination and the rationale for the sanction
33 imposed.
34 viii. To make an impact statement during the point of the proceeding
35 where the decision maker is deliberating on appropriate sanctions.
36 ix. To simultaneous (among the parties) written or electronic notifi-
37 cation of the outcome of a judicial or conduct process, including the
38 sanction or sanctions.
39 x. To be informed of the sanction or sanctions that may be imposed on
40 the respondent based upon the outcome of the judicial or conduct process
41 and the rationale for the actual sanction imposed.
42 xi. To choose whether to disclose or discuss the outcome of a conduct
43 or judicial process.
44 xii. To have all information obtained during the course of the conduct
45 or judicial process be protected from public release until the appeals
46 panel makes a final determination unless otherwise required by law.
47 6. For crimes of violence, including, but not limited to sexual
48 violence, defined as crimes that meet the reporting requirements pursu-
49 ant to the federal Clery Act established in 20 U.S.C.
50 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the
51 transcript of students found responsible after a conduct process that
52 they were "suspended after a finding of responsibility for a code of
53 conduct violation" or "expelled after a finding of responsibility for a
54 code of conduct violation." For the respondent who withdraws from the
55 institution while such conduct charges are pending, and declines to
56 complete the disciplinary process, institutions shall make a notation on

1 the transcript of such students that they "withdrew with conduct charges
2 pending." Each institution shall publish a policy on transcript
3 notations and appeals seeking removal of a transcript notation for a
4 suspension, provided that such notation shall not be removed prior to
5 one year after conclusion of the suspension, while notations for expul-
6 sion shall not be removed. If a finding of responsibility is vacated
7 for any reason, any such transcript notation shall be removed.

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

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

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

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

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

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

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

54 4. Information discovered or produced as a result of complying with
55 this section shall not be subject to discovery or admitted into evidence
56 in any federal or state court proceeding or considered for other

1 purposes in any action for damages brought by a private party against an
2 institution, unless, in the discretion of the court, any such informa-

3 tion is deemed to be material to the underlying claim or defense.

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

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

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

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

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

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

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

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

1 return; and that generally, the institution shall not share information
2 about a report of domestic violence, dating violence, stalking, or sexu-
3 al assault with parents without the permission of the reporting individ-
4 ual.

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

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

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

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

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

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

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

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

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

32 § 6447. Student onboarding and ongoing education. 1. Every institution
33 shall adopt a comprehensive student onboarding and ongoing education
34 campaign to educate members of the institution's community about domes-
35 tic violence, dating violence, stalking, and sexual assault, in compli-
36 ance with applicable federal laws, including the Clery Act as amended by
37 the Violence Against Women Act reauthorization of 2013, 20 U.S.C.
38 1092(f).

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

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

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

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

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

1 e. Awareness of violence, its impact on victims and survivors and
2 their friends and family, and its long-term impact;
3 f. Bystander intervention and the importance of taking action to
4 prevent violence when one can safely do so;
5 g. Risk assessment and reduction including, but not limited to, steps
6 that potential victims, perpetrators, and bystanders can take to lower
7 the incidence of violations, which may contain information about the
8 dangers of drug and alcohol use, including underage drinking and binge
9 drinking, involuntary consumption of incapacitating drugs and the danger
10 of mislabeled drugs and alcohol, the importance of communication with
11 trusted friends and family whether on campus or off campus, and the
12 availability of institution officials who can answer general or specific
13 questions about risk reduction; and
14 h. Consequences and sanctions for individuals who commit these crimes
15 and code of conduct violations.

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

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

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

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

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

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

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1 the court to redact such name and identifying biographical information
2 and so advise the parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (i) Privacy of name in certain legal challenges to college/university
50 disciplinary findings. In any proceeding brought against a college or
51 university that is chartered by the regents or incorporated by special
52 act of the legislature, which proceeding seeks to vacate or modify a
53 finding that a student was responsible for a violation of college or
54 university rules regarding a violation covered by article one hundred
55 twenty-nine-B of the education law, the name and identifying biograph-
56 ical information of any student shall be presumptively confidential and

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1 shall not be included in the pleadings and other papers from such
2 proceeding absent a waiver or cause shown as determined by the court.
3 Such witnesses shall be identified only as numbered witnesses. If such a
4 name or identifying biographical information appears in a pleading or
5 paper filed in such a proceeding, the court, absent such a waiver or
6 cause shown, shall direct the clerk of the court to redact such name and
7 identifying biographical information and so advise the parties.

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

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

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

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

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

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