



Governor Cuomo Announces Results of Article 129-B State Audit of New York Higher Education Institutions

September 20, 2017

On Tuesday, September 19, 2017, Governor Cuomo announced the results of the comprehensive review of all higher education institutions across the state to evaluate compliance with Article 129-B of the New York Education Law (also referred to as the “Enough is Enough” law). The *Preliminary Report: Statewide Review of Compliance with Education Law Article 129-B*, issued by the New York State Office of Campus Safety (OCS), can be found [here](#).

Governor Cuomo’s announcement came just weeks after the announcement by U.S. Secretary of Education Betsy DeVos of her plans to revise and possibly rescind the Obama administration’s guidelines on Title IX campus sexual assault. In a press release, available [here](#), Governor Cuomo stated, “In New York, we know that sexual assault is a crime, and we will continue to hold our colleges and universities to the highest possible standards to ensure the safety of all New York students.” He continued, “Regardless of the federal government’s dangerous actions to rescind Title IX protections, this state, and this administration will continue to stand with and advocate for survivors, and we will not go backward in the fight against sexual assault.”

In 2015, Governor Cuomo signed Article 129-B into law to protect students from sexual assault, dating violence, domestic violence, and stalking. While many of its provisions reinforce or expand on existing obligations imposed on higher education institutions by federal law, Article 129-B also imposes a number of requirements that impact how institutions respond to and investigate claims of campus sexual assault that go beyond federal requirements.

On May 17, 2017, Governor Cuomo [ordered](#) a comprehensive statewide review of compliance with Article 129-B of both public and private institutions. This review was conducted by a multi-agency team, including representatives from the New York State Police, Division of Criminal Justice Services, Department of Health, Office of Victims Services, Division of Human Rights, and New York State Education Department. A major focus of the team was determining whether colleges and universities are complying with the law’s requirements to adopt certain procedures for investigating sexual assaults, train students and staff, and inform students of their rights.

Results of Phase I

The statewide review found that the majority of higher education institutions are significantly compliant with Article 129-B.

As per the data set forth in the *Preliminary Report*:

- 95 schools (38.9%) were found to be compliant with Article 129-B requirements. These schools were found to meet or exceed the aforementioned requirements.
- 120 schools (49.2%) were found to be significantly compliant with Article 129-B requirements. These schools were found to meet most of the requirements of Article 129-B but must address some issues to achieve full compliance. Those issues fall into the categories of training consistency; lack of adequate services available to students; verifications of completion of student training; accessibility and availability of information; definition of confidentiality; missing, inconsistent, or contradictory information; and noncompliant resolution procedures.
- 29 schools (11.9%) were found to be non-compliant with Article 129-B requirements. These schools were found to fail to meet many of the requirements and must take substantial corrective action.

Institutions that are not in compliance with all provisions of Article 129-B should expect to receive correspondence from the OCS notifying them of their deficiencies. These institutions will be required to submit an action plan to attain compliance with all of the law's requirements to OCS within 30 days, and to submit documentation of compliance to OCS within 60 days.

Phase II

"Following-up on the results of this preliminary review, the Office of Campus Safety and assisting agencies will begin the second phase of the review, focused on addressing shortfalls in institutions' procedures when investigating and adjudicating reports of sexual assault. This second phase will be an in-depth review of campus practices beyond documentation; It will include a review of campuses identified as potentially problematic during the initial review, and others where there is an indication of potential non-compliance when handling reports," reads Governor Cuomo's press release.

As set forth in the *Preliminary Report*, "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."

Further, "Phase II will involve a 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 a 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.”

The publication of the *Preliminary Report* provides an opportunity for institutions to consider reviewing their policies and procedures to ensure compliance with Article 129-B. Particularly at this time of year as a new semester begins, institutions should ensure that onboarding and ongoing educational training programs are in place.

For more information on how to develop, implement, and maintain legally compliant policies, procedures, and training programs, please contact any of the following attorneys in our Higher Education Practice Group:

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