



Revised

MEMORANDUM

October 2, 2014

TO: Members of the Board of Trustees

**FROM: Nancy L. Zimpher, Chancellor, at the request of
Governor Andrew M. Cuomo**

SUBJECT: Sexual Assault Response & Prevention

Action Requested

Consistent with the leadership of Governor Andrew M. Cuomo and to build upon the State University of New York's nationally-recognized efforts to address sexual violence on its campuses, the proposed resolution will establish a comprehensive, system-wide, uniform set of sexual assault prevention and response practices at SUNY campuses, which can be a model for colleges and universities across the State and the nation.

This proposed resolution will require:

- All SUNY campuses to adopt a uniform Sexual Assault Victims' Bill of Rights to notify and assist victims of sexual assault of their right to contact campus, local and/or State law enforcement, and to widely publicize the Bill of Rights to all students and distribute it to victims;
- All SUNY campuses to adopt a system-wide definition of affirmative consent as a clear, unambiguous, and voluntary agreement between the participants to engage in specific sexual activity, and shall widely disseminate this definition to the college/university community;
- All SUNY campuses to adopt a uniform, system-wide sexual assault student reporting amnesty policy;
- SUNY, working with the State, to conduct statewide coordinated training with all SUNY campuses, including training by University Police and State Police, mandatory to the fullest extent possible, on best practices for campus response and investigation plans and victim sensitivity, and training by expert SUNY and statewide officials for college administrators and adjudicators on preventing and addressing sexual violence and how to improve compliance

with existing federal laws. SUNY will also release a uniform training for students to be included at each freshman orientation;

- SUNY, in coordination with the State, to undertake a statewide public awareness campaign, to increase awareness among college students, high school students, and parents of individual safety and prevention techniques as well as the importance of bystander intervention in any unsafe situation;
- All SUNY campuses to adopt a uniform, system-wide Confidentiality and Reporting Protocol; and
- All SUNY campuses to conduct a uniform campus climate assessment.

Resolution

I recommend that the Board of Trustees adopt the following resolution:

Whereas sexual assault and violence on campuses cause unmeasurable trauma to victims and cannot and will not be tolerated; and

Whereas New York State and SUNY are committed to taking great care in protecting the safety and well-being of all of its students, employees and personnel and to creating and maintaining a safe educational and learning environment free from all sexually related harms, whether occurring on or off campus; and

Whereas SUNY recognizes the need to take all possible precautionary steps to prevent sexual assaults from occurring, and finds that college/university officials can play a crucial role in combatting sexually-related crimes that injure our dedicated students and employees, and finds that we must do everything possible to assist and safeguard the victims of these horrendous crimes and to hold offenders accountable for their actions in accordance with due process; and

Whereas Governor Andrew M. Cuomo has taken an active leadership role in addressing sexual violence on college/university campuses; and

Whereas consistent with the Governor's leadership, SUNY has done a comprehensive review of existing policies and procedures, and recognizes that many of its campuses have

long maintained programs that are best practices aimed at responding to and preventing sexual assault and other forms of sexual violence on and off campus, and finds that it is critical that these best practices be replicated consistently at all SUNY campuses so that there is a clear and uniform policy system-wide; now, therefore be it

Resolved that all SUNY campuses shall adopt the system-wide, uniform Sexual Assault Victims' Bill of Rights, to notify and assist victims of sexual assault of their right to contact campus, local, and/or State law enforcement; and, be it further

Resolved that the Sexual Assault Victims' Bill of Rights shall include campus-specific and local community victim resources, and shall be widely publicized to all students, with a hard copy document being made specifically available to any known victim, so that students have clear and effective information on what rights and options they have as well as how to access immediate and on-going assistance after an act of sexual assault has occurred; and, be it further

Resolved that all SUNY campuses shall adopt the following uniform definition of affirmative consent, and widely disseminate this definition to the college/university community:

- Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- A person is deemed incapable of consenting when that person is mentally defective, mentally incapacitated, physically helpless (whether induced by drugs, alcohol or otherwise), or asleep; and, be it further

Resolved that all SUNY campuses shall adopt the uniform sexual assault student reporting amnesty policy granting amnesty for various student code of conduct violations, for example, minor alcohol or drug infractions, for students reporting incidents of sexual assault or other sexual violence; and, be it further

Resolved that SUNY will work with the State to convene statewide coordinated training by University Police and State Police, mandatory to the fullest extent possible, on best practices for campus response and investigation plans and victim sensitivity, as well as training by expert SUNY and statewide officials for college administrators and adjudicators throughout New York State on preventing and addressing sexual violence and how to improve compliance with existing federal laws at a time to be announced by SUNY, and all SUNY campuses shall implement the uniform freshman orientation training; and, be it further

Resolved that SUNY will coordinate with the State to undertake a statewide public awareness campaign to increase awareness among college students, high school students, and parents of individual safety and prevention techniques as well as the importance of bystander intervention in any unsafe situation; and, be it further

Resolved that all SUNY campuses shall adopt the uniform Confidentiality and Reporting Protocol, encouraging the prompt and accurate reporting of acts of sexual assault, allowing the campus community to respond quickly to allegations of sexual assault, and ensuring that students have timely and accurate information about available confidential resources; and, be it further

Resolved that all SUNY campuses shall conduct the uniform campus climate assessment in order to gauge the prevalence of sexual assault on campus, test students' attitudes and awareness of the issue, and provide campuses with information to help them form solutions for addressing and preventing sexual assault on and off campus; and, be it further

Resolved that, in consultation with the SUNY State-operated campuses and community colleges, within sixty (60) days, the Chancellor, or designee, shall adopt a comprehensive, uniform, system-wide sexual assault prevention and response plan to be implemented at all SUNY campuses

that will include the following: (1) the uniform Sexual Assault Victims' Bill of Rights; (2) the uniform sexual assault student reporting amnesty policy; (3) the uniform freshman orientation training; (4) the uniform Confidentiality and Reporting Protocol; (5) the uniform campus climate assessment; and (6) the uniform definition of affirmative consent; and, be it further

Resolved that all SUNY campus Presidents must report to the Chancellor, or designee, by March 31, 2015, the actions they have taken to address the measures set forth above, and the Chancellor shall subsequently report to the Board on the consolidated actions of the campuses and that the Chancellor shall also report these actions to the Governor.

Attachment

Background on SUNY's Sexual Violence Prevention Programming

A Mission of Fighting Sexual Violence and Helping Survivors:

- The State University of New York takes the issues of sex discrimination, including sexual violence, extremely seriously. SUNY is regarded as a leader in fighting sex discrimination, including sexual violence, and providing resources to victims and survivors.
- SUNY partners with national, state and local organizations, as well as colleges and universities across the country, to advance our mission of ending violence on campus.
- SUNY brings these issues to the forefront, discussing the problem of sexual assault on campus at recent meetings of Presidents and Provosts, including a panel of attorneys and Presidents. The Chancellor emphasized the importance of fighting violence in all of its forms, including sexual violence. At a meeting of the SUNY Board of Trustees, SUNY attorneys briefed Board members on these critical issues and what SUNY is doing to lead.
- SUNY offers training at many meetings of its professional employees. Professionals from across our campuses, including HR professionals, police chiefs, counseling center leadership, housing, judicial/conduct, and student affairs leadership, meet with colleagues in similar positions at other SUNY campuses on a regular basis throughout the year. At these meetings they receive relevant updates and training from the Office of General Counsel and other offices, which include emphasis and guidance on properly, promptly, and impartially addressing complaints of sex discrimination, including sexual violence.
- SUNY campuses have wide-ranging programs that seek to prevent sexual violence and address such violence when it occurs. Many of these programs have been cited as national models, including citation in resources made available by the White House Task Force to Protect Students from Sexual Assault.

Training:

- Over the past few years Office of General Counsel attorneys Joseph Storch and Andrea Stagg have offered over 100 trainings to SUNY professionals on campus safety issues, including Clery Act compliance, Title IX, the Violence Against Women Act, Anonymous defamation and Cyber-Bullying, behavioral intervention and threat assessment, bystander intervention, workplace violence prevention, and related topics. Trainings are offered regionally to ensure participation across all campuses. The two have also presented Webinars for national higher education groups and have spoken at conferences and colleges across the country. They have each trained over 5,000 higher education professionals representing hundreds of institutions across the country, including training or answering questions for lawyers and college officials from every state in the Nation.

- Last year, the Office of General Counsel issued guidance (http://www.nacua.org/documents/VAWA_Summary.pdf) on complying with VAWA prior to the President signing the bill. The guidance was issued to the SUNY Clery and Title IX Listservs (each with around 300 members) and adopted by several national higher education groups. SUNY's Title IX and Clery Listservs are the main vehicle for providing briefings and analysis on new guidance, law, and regulation. A few weeks later, Stagg and Storch presented a group of national Webinars to brief higher education professionals across the country on the laws and changes we must make. Several thousand attended these Webinars.
- This year, the Department of Education issued proposed regulations implementing the VAWA on June 19. On June 26, the Offices of General Counsel, University Police and University Life (in partnership with the New York State Office for the Prevention of Domestic Violence) conducted a training in Albany for dozens of SUNY professionals on how to comply with the law this year (not next year when the regulations actually take effect). A second training was held July 9.
- Between June 26 and July 9, over 250 SUNY professionals, representing 100% of our State-operated colleges and nearly all SUNY community colleges, attended the training and began working on implementing policies and trainings. All campuses now have access to the tools, including knowledge as well as sample documents, to best serve our students and comply with the law.
- The team, including eight SUNY lawyers and two interns, wrote a 93 page guidance document to accompany the training. These documents were written in one week, between the regulations being published and the first training.
- Following upon the trainings, SUNY made the guidance free and public, provided no one used it for commercial purposes. The guidance was shared by several national higher education groups and has been accessed over 15,000 times by institutions across the country. <http://system.suny.edu/media/suny/content-assets/documents/generalcounsel/SUNY-VAWA-Guidance-2014.pdf>

White House Task Force:

- SUNY campuses were recognized and cited by the CDC in the White House Report for their evidence-based strategies for primary prevention of sexual violence. <https://www.notalone.gov/assets/evidence-based-strategies-for-the-prevention-of-sv-perpetration.pdf>
- SUNY enthusiastically participated in the White House Task Force to Protect Students from Sexual Assault.
- Senior Vice Chancellor and General Counsel Bill Howard attended a meeting at the White House, participating with Vice President Biden and other officials in a discussion of salient issues and best practices, including some utilized by SUNY campuses (many of which made their way conceptually into the First Report).
- Attorneys Andrea Stagg and Joseph Storch worked with national higher education groups to provide technical guidance and share best practices.

- When the Report was issued, SUNY attorneys quickly issued guidance through SUNY ListSrvs. Storch and Stagg conducted a series of Webinars for different higher education groups, educating them about the best practices and resources of the First Report.

Pending Legislation:

- The federal Campus Accountability and Safety Act (“CASA”) was introduced on July 30, 2014. On the afternoon of July 31, SUNY attorneys issued a nineteen page analysis of the law completed the night the Bill was issued and followed up with technical guidance for federal legislative staff.

The Mission Continues:

- United States Department of Education Office for Civil Rights has referred to SUNY as a national leader in compliance with Title IX. Attorney Andrea Stagg led a System-wide compliance program addressing the key 2011 Dear Colleague Letter, and working with OCR to organize and implement a Resolution Agreement that serves as a model for institutions across the country.
- SUNY continually strives to be a leader in complying with the law and improving its practices to fight sexual violence on campus.
- SUNY has been voluntarily conducting multiple forms of sexual violence climate assessments at many of its campuses for several years. SUNY awaits the results of the federal CASA legislation to determine how to improve and make most effective and efficient such assessments.
- SUNY State-operated colleges routinely issues permanent dismissals and long term suspensions in cases of sexual assault, and related crimes.
- Per a 2004 Chancellor’s memorandum, SUNY State-operated colleges all affix transcript notations to those found responsible for violence (including sexual violence), hazing, and similar crimes. The University is pleased that the federal government and other leaders are calling for such notations.
- SUNY campuses all have Title IX coordinators, professionals responsible for Clery Act compliance and training, and trained counselors. Our State-operated colleges have sworn law enforcement, University Police who train alongside local law enforcement but also have at least 60 college credits prior to starting their role with the force. Our University Police leaders are extremely knowledgeable and recognized in their field.
- Pursuant to State law, SUNY campuses maintain Memoranda of Understanding with local law enforcement authorities, regarding response to crimes of violence and other matters.