



A Guide to Compliance With New York State Education Law Articles 129-A and 129-B Submissions Meeting the July 1, 2024 Deadline

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January 2024

In Brief: Every ten years, public and private higher education institutions in New York State that are chartered by the Regents or created by an act of the Legislature and maintain a campus in the Empire State must submit to the State Education Department (SED) a full certification, including all relevant policies, under New York State Education Law Articles 129-A and 129-B. Having been through the process a few times and recognizing the compliance challenges full certification has presented for institutions in the past, the team at Grand River Solutions has created this memo summarizing the obligations, collected resources that can aid in compliance, and prepared a chart of the obligations under each law section by section, with practice pointers where relevant. We hope institutions can use this guidance for compliance; we are distributing it now to give you ample time to meet the July 1, 2024 deadline.

Certification Requirements: New York State Education Law Articles 129-A and 129-B each require several policies, processes, and notifications. There are also certification requirements. Every year, colleges and universities must certify their compliance with 129-A¹ and 129-B² to SED (which we call *basic certification*). Once every 10 years (arriving next on July 1, 2024), each college and university must submit what we call *full certification*, a copy of the full policies and procedures that demonstrate compliance with each element of Article 129-A³ and Article 129-B.⁴

For 2024, [SED will accept submissions](#) only through the IRS Data Exchange (IDEx). From the perspective of the authors, this will be a *significant* improvement in efficiency compared to submission systems in 2004 and 2014, and SED has obviously taken significant steps to make the process more efficient and paperless; with the full use of the IDEx system, SED will not accept submissions by mail. There are two options for submitting the relevant documentary material: upload each rule, policy, or procedure individually, or upload any relevant documents, and then, in a table specify the name of the document and the page number or page range for where the specific policy is addressed. SED will not accept links to documents.

Opportunities for Improvement: It goes without saying that this presents a convenient opportunity in Spring 2024 to conduct a self-audit or review of your documentation to ensure that all the myriad elements are

¹ NYS Education Law §6430(3).

² NYS Education Law §6440(1)(b).

³ NYS Education Law §6430(5).

⁴ NYS Education Law §6440(1)(c). Although the first filing for 129-B occurred in 2016, the enacting legislation conforms all future full certifications to the same “ends in 4” cycle as Article 129-A. Note also that this certification submission is separate and apart from the Education Law Article 129-B aggregate data submission, which is due on or before each October 1.

included, and to modernize documents that may need updating. Changes made based on other laws, i.e., the 2020 Title IX Final Rule, may have resulted in new policy documents that did not pull over required state law elements; preparation for the full certification is an opportunity to correct any deficiencies.

To help our New York State public and private colleges and universities prepare for the 2024 full certification, we have developed a chart that includes the relevant requirements of Education Law Articles 129-A and 129-B. Also below are a list of articles and additional resources that can aid in compliance with the underlying requirements. You are welcome to share this document and resources, available via our website or in the resource section of [The River Connect](#).

Grand River Solutions Resources

- Andrea Stagg and Joseph Storch, *New York Bias Related and Hate Crimes Reporting and Response Bill Offers Broad Strokes, But Questions Remain*, <https://riverconnect.app/news/667134>.

New York State Resources & Links

- Information and guidance related to the Article 129-A Written Rules and Policies reporting <https://www.nysed.gov/college-university-evaluation/compliance-education-law-article-129-a-and-article-129-b> (if the IDEX submission link is not live yet, know that it is forthcoming as of 2/14).
- New York State Education Department, *Complying with Education Law Article 129-B*, <https://www.nysed.gov/sites/default/files/article-129-b-guidance.pdf>. (The best guide on complying with Education Law Article 129-B remains the New York SED guidance issued in 2015, which includes the statutory language in italicized text, and plain language interpretation and guidance in plain text following each section of the statute).
- Article 129-B Questions & Answers, <https://www.nysed.gov/sites/default/files/article-129-b-questions.pdf>.
- Article 129-A Statute: <https://www.nysenate.gov/legislation/laws/EDN/A129-A> (note that depending on your settings, the website may show older versions of the statute as default).
- *Model MOU between Colleges and Rape Crisis Centers or Other Advocacy Organizations*, <https://system.suny.edu/sexual-violence-prevention-workgroup/mou-model/> (Prepared as a partnership of SUNY, the Department of Health, and the Coalitions that represent rape crisis programs, updated 2022).
- Chantelle Cleary Botticelli, Lori Fox, Rachel J. Nash, Andrea Stagg, and Joseph Storch, *A Plain Language Explanation of Distinctions Between the New York State Penal Law and the College Disciplinary Processes*, <https://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/> (Resource created to assist institutions in the specific obligation to provide assistance with student understanding of the differences in the conduct and criminal justice processes, available for free download as Word or PDF) (2015).
- *New York Education Law Article 129-B Translations* (pursuant to a federal grant, SUNY translated elements of Education Law Article 129-B into 120 written languages and made them available in Excel at no cost to other institutions), <https://www.suny.edu/violence-response/downloads-129b/> (Password: savr129b).

Contact

For questions or assistance with compliance, please contact Senior Director of Business Development Chantelle Cleary Botticelli at chantelle@grandriversolutions.com.

ACTION ITEM IN NY EDUC. LAW 129-A	NOTES
<p>Adopt written rules for implementing all policies and for the maintenance of public order on campus and other institution property.</p> <ul style="list-style-type: none"> Rules shall prohibit any action or situation which recklessly or intentionally endangers mental or physical health or involves the forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization. Rules are for students, faculty, staff, visitors, licensees, and invitees on campuses and institutional property. Rules shall clearly state penalties for violation, including how someone will be ejected (non-community member), suspended, expelled, or otherwise appropriately disciplined for a violation. Rules shall also state how this applies to organizations. <p>CITATION: § 6430</p>	<p>All institutions chartered by Regents or incorporated by Act of Legislature and maintain a campus in New York.</p>
STATUS	
<p>Copy of rules given to all enrolled students annually and deemed part of all organizations' by laws.</p> <p>CITATION: § 6430</p>	
STATUS	
<p>Annually file with NYSED on or before July 1st a certificate of compliance with the provisions of 129-A and file full written rules with NYSED once per decade.</p> <p>CITATION: § 6430</p>	<p>Next full filing 2024.</p>
STATUS	
<p>Appoint an advisory committee on campus security</p> <ul style="list-style-type: none"> At least six members, 1/2 female, 1/3 students from list by student gov, 1/3 of faculty from list by faculty governance; 1/3 appointed by the President or Chief Administrative Officer. Review current security policies and procedures and make recommendations for improvement. 	<p>Note overlap with requirements of Education Law Article 129-B.</p>

	NOTES
<ul style="list-style-type: none"> • Specifically review: <ul style="list-style-type: none"> o Campus education (including for security personnel and those who advise/supervise students) regarding sexual assault, domestic violence, stalking; bias and hate crimes; o Personal safety and crime prevention; o Reporting of sexual assault, domestic violence, stalking, and hate crimes, and assisting victims during investigations; o Referrals to appropriate authorities; o Counseling victims; and o Responding to inquiries from concerned persons. <p>Report findings to the President or chief administrative officer each academic year, and make report available upon request.</p> <p>CITATION: § 6431</p>	

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<p>Inform incoming students about sexual assault, domestic violence, and stalking prevention through multiple types of programs (goals of awareness, discussion of issues, increased reporting, and prevention). Programs/information must include:</p> <ul style="list-style-type: none"> • Applicable laws and penalties; • Procedures/policy of the institution; • Availability of counseling and other support services; • Nature of and common circumstances relating to DV, stalking, and sex offenses on campuses; and • Method institution uses to advise and update students about security procedures. <p>CITATION: § 6432</p>	<p>Note overlap with Education Law Article 129-B.</p>
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<p>Indicate on campus website how to access institution crime stats required by the Clery Act.</p> <ul style="list-style-type: none"> • US ED website needs to be listed, including a link to the statistics for the specific institution; • Report and post incidents of hate crime offenses 	<p>Note that recent legislative changes removed some of the quoted text requirements.</p>
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<p>separately on the website;</p> <ul style="list-style-type: none"> As part of onboarding, inform students and prospective students about the ASR and other campus safety policies and procedures. <p>CITATION: § 6433</p>	<p style="text-align: center;">NOTES</p>
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<p>Adopt and implement a plan for investigating any reported hate crimes or violent felonies occurring at or on the grounds of the institution and for addressing reports of missing students.</p> <p>Plans shall include coordination with local law enforcement and include:</p> <ul style="list-style-type: none"> Written agreements with local law enforcement regarding prompt investigations and requirement for notification; Inform sexual assault reporting individuals of options to notify law enforcement, right to report or not to report to local law enforcement, offer assistance by campus authorities to notify law enforcement. <p>Defines relevant terms.</p> <p>CITATION: § 6434</p>	<p>Note overlap and distinctions with Clery Act hate crime, missing student, and other obligations (including different definitions and geographical standards).</p>
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<p>Standards for a local sheriff to appoint a private institution campus security officer, with powers established in the statute:</p> <ul style="list-style-type: none"> Successfully complete a course of instruction in public and private law enforcement; Good character, background check, 21 years old, citizen of the US, properly registered. <p>CITATION: § 6435</p>	<p>Independent non-profit institutions outside New York City which maintain campus.</p>
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<p>Inform incoming students about bias related and hate crime prevention measures through programming. Information shall include:</p> <ul style="list-style-type: none"> • Applicable laws; • Penalties; • Procedures for addressing bias related crime; • Available counseling/support services; • Nature of and common circumstances relating to bias related and hate crimes; • Methods used to advise and update students about security procedures. <p>CITATION: § 6436</p>	<p style="text-align: center;">NOTES</p> <p>See Memo regarding significant updates to the practical applications of this section in resources.</p>
<p>STATUS</p>	
<p>Prohibit the advertising, marketing, or merchandising of credit cards on campus, unless the institution has an official institution credit card marketing policy. If so, then the policy may include:</p> <ul style="list-style-type: none"> • Registration of on-campus credit card marketers; • Limiting marketers to specific dates and areas of campus; • No gifts to students in exchange for completing an application; • Inform students about credit management practices. <p>CITATION: § 6437</p>	
<p>STATUS</p>	
<p>Provide written notice to students residing in institution-owned housing regarding the fire safety system, including any sprinkler information, as well as how to access the required fire safety information and Annual Report under the Higher Education Act.</p> <p>CITATION: § 6438</p>	<p>Residential institutions only; overlap with federal fire reporting.</p>
<p>STATUS</p>	

<p>*SUNY/CUNY only - provide training for opioid antagonists, maintain onsite, and be accessible by every Resident Assistant for use during emergencies. Designate and train additional employees to volunteer to administer opioid antagonists (such as NARCAN).</p> <p>CITATION: § 6438-A</p>	<p style="text-align: center;">NOTES</p> <p>SUNY and CUNY residential institutions only.</p>
<p>STATUS</p>	
<p>*SUNY/CUNY only - provide access to medication abortion to all enrolled students through individuals authorized to prescribe, or referrals to authorized providers. In 2025, will need to annually report to Governor and Legislature (via Board of Trustees) compliance with this regulation and the number of individuals at each campus authorized to prescribe such prescription drugs.</p> <p>CITATION: § 6438-B</p>	<p>SUNY and CUNY institutions only.</p>
<p>STATUS</p>	
<p>No rule or limitation preventing a student-athlete from earning compensation or representation for name, image, or likeness. Cannot provide compensation to a prospective student-athlete for name, image, or likeness. Required student-athlete assistance programs for certain NCAA Division I student athletes.</p> <p>CITATION: § 6438-C</p>	<p>Residential institutions only; overlap with federal fire reporting.</p>
<p>STATUS</p>	

ACTION ITEM IN NY EDUC. LAW 129-B	NOTES
<p>Provide all enrolled students with a copy of rules and policies that include the elements required by the law and post it on the website.</p> <p>CITATION: § 6440(4)</p>	<p>Rules can be part of the Code of Conduct or another similar document.</p>
STATUS	
<p>Annually file with NYSED on or before July 1st a certificate of compliance with the provisions of 129-B and file full written rules with NYSED once per decade.</p> <p>CITATION: § 6440(1)(b)</p>	<p>Next full filing 2024.</p>
STATUS	
<p>Adopt the definition of affirmative consent from the law, verbatim with additional language adopted verbatim or edited.</p> <p>CITATION: § 6440(1)(2)</p>	
STATUS	
<p>Adopt a verbatim statement on amnesty for violations of drug/alcohol use provisions of the student code.</p> <p>CITATION: § 6441(1)</p>	
STATUS	
<p>Adopt the Students Bill of Rights verbatim and distribute it as required. Distribute to students annually (may be in the annual disclosure of the code of conduct). Make it available on the website. Post it in residence halls and campus centers and posting must have a link or information about how to submit a report of sexual or interpersonal violence, and how to disclose confidentially.</p> <p>CITATION: § 6443</p>	<p>Consider creating a QR code to add to these posters for ease of use.</p>
STATUS	

ACTION ITEM IN NY EDUC. LAW 129-B

NOTES

Ensure that reporting individuals are advised of their rights, including:

- Notifying police or not;
- Emergency access to a trained professional on or off campus who can explain options for moving forward, evidence preservation, information about sexual assault forensic examinations, the difference between criminal and institutional processes; and confidentiality;
- Talking to certain designated institution representatives confidentially or privately about the incident who can assist in providing information about resources and options;
- Obtaining confidential services from state or local government;
- Filing a report of sexual assault, domestic/dating violence, or stalking and consulting with the Title IX Coordinator. Such reports will be investigated in accordance with policy. Individual's identity will remain private if requested;
- Filing a report with HR if the accused is an employee or requesting that a confidential or private employee assist with such reporting;
- Assistance in initiating legal proceedings, including being directed to a list of legal resources locally;
- To withdraw a complaint at any time.

CITATION: § 6444(1)

Consider which on-call individuals will serve as the emergency access professional.

This does not necessarily need to be the Title IX Coordinator.

Note that certain resources can be provided externally.

See listed resource for a writeup of the difference between the conduct and criminal justice process.

STATUS

Make a verbatim statement to reporting individuals at first instance of disclosure to an institution representative

- "You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution."

Provide copies of this mandated language to those likely to receive reports to carry in a wallet, or have them save the statement as a note in their phone.

<ul style="list-style-type: none"> Train individuals likely to receive a report to use the verbatim statement and train them to understand the available options, resources, policies, etc. <p>CITATION: § 6444(2)</p>	<p style="text-align: center;">NOTES</p>
<p>STATUS</p>	
<p>Ensure that reporting individuals have information about resources and their cost, whether such resources (mental health, health, intervention services) are for a fee or not.</p> <p>CITATION: § 6444(3)</p>	<p>Resources can be external.</p>
<p>STATUS</p>	
<p>Provide information to reporting individuals about STIs, forensic exams, and resources available through the NYS Office of Victim Services.</p> <p>CITATION: § 6444(3)</p>	<p>https://ovs.ny.gov/</p>
<p>STATUS</p>	
<p>Ensure reporting individuals are provided the following protections and accommodations:</p> <ul style="list-style-type: none"> No contact orders – explain what they mean. Either party can request a review or modification of the no contact order consistent with institution policy (include a statement about how to do that); Be assisted by an official to obtain an order of protection. Have someone from the institution or a designee explain such an order and answer questions about it. Have an explanation of the consequences for violating the order. Receive assistance from campus security or local law enforcement in effecting an arrest; Interim suspension of student accused/respondent, consistent with institution policy; Interim measures for when a non-student accused/respondent presents a continuing threat, consistent with institution policy, collective bargaining agreements, etc; Interim measures and accommodations regarding housing, academic, employment, transportation, or other arrangements (reasonable and available); 	<p>Consider creating a checklist or guide to provide this information to students after a disclosure.</p>

NOTES

Parties must have the opportunity to request a review or modification to interim measures that directly affect them, and submit evidence, which will be reviewed promptly.

CITATION: § 6444(4)

STATUS

Ensure that every student has the following rights:

- Right to request that student conduct charges or equivalent are filed against an accused consistent with the requirements of the law.
- Right to a process (for sexual assault, domestic/dating violence, stalking) that includes:
 - o Notice to respondent including date, time, location, and factual allegations concerning the violation;
 - o Reference to specific code provision or policy alleged to have been violated;
 - o Possible sanctions;
 - o An opportunity to offer evidence during the investigation (and if there is a hearing, access to an existing recording or transcript of the hearing);
 - o Access to at least one level of appeal, which will be determined by a panel;
 - o Simultaneous notice of outcome including:
 - Findings of fact, decision, sanction,
 - Rationale for decision and sanction
 - o Equal rights to both parties for any rights provided;
 - o Right to be accompanied by an advisor of choice in a hearing or related meeting;
 - o Right to a prompt response to a complaint, timely investigation and adjudication, conducted by impartial individuals without a conflict of interest who receive annual training on:
 - Conducting investigations;
 - Effects of trauma;
 - Impartiality;
 - Rights of the respondent;
 - Institutional policies and procedure.

CITATION: § 6444(3)

“simultaneous “ doesn’t appear here but in Bill of Rights above

Ensure that the training for impartial individuals is posted to your website, pursuant to the Title IX Regulations

Note required trainings overlaps and differences with the Title IX Regulations and the VAWA Amendments to the Clery Act

STATUS

<ul style="list-style-type: none"> • Right to concurrent processes in the institution and criminal justice system; • Right to review and present available evidence in the case file, consistent with institutional policy; • Right to exclude their own prior sexual history, mental health or health diagnosis or treatment from responsibility decision. In sanctions past findings against a party may be admissible; • Right to written or electronic notice of any meeting they are required or eligible to attend, violations alleged, possible sanctions; • Right to submit or make an impact statement to a decisionmaker deliberating sanctions; • Right to be informed of the sanction and rationale; • Right to choose whether to disclose the outcome of the process; • Right to have information from the process protected from public release. <p>CITATION: §6444(5)(c)(IV)-(XII)</p>	<p style="text-align: center;">NOTES</p> <p>Note distinctions between Title IX Regulations and 129-B on past sexual history.</p>
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STATUS	
<p>Publish a policy on transcript notations that the institution will apply a transcript notation for students found responsible for certain crimes—criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson.</p> <p>Verbatim notation language for suspended, expelled, or withdrew with charges pending. Rules for when notations may or may not be removed and timeline.</p> <p>CITATION: § 6444(6)</p>	<p>Note that the transcript notations are applied for Clery Act primary crimes, not limited to sexual and interpersonal violence.</p>

STATUS	
<p>If practicable, enter into an MOU or partnerships with local organizations that provide resources and services or provide referrals to such resources (for institutions that lack appropriate on-campus resources/services).</p> <p>CITATION: § 6444(7)</p>	<p>SED guidance reminds that there is no requirement to pay a fee for such an agreement.</p>

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To the extent practicable, ensure that students have access to a sexual assault forensic exam on or off campus.

CITATION: § 6444(8)

Information on forensic exams may be found through the Office of Victim Services, <https://ovs.ny.gov/Sexual-Offense-Kits>

STATUS

Conduct a campus climate assessment every two years on student experience with and knowledge about reporting and adjudicatory processes including questions on the following:

- Title IX Coordinator role;
- Policies and procedures addressing sexual assault;
- How and where to report domestic/dating violence, sexual assault, stalking as a victim, survivor, or witness;
- Availability of on and off campus resources;
- Prevalence of victimization and perpetration of these crimes on and off campus in a set period;
- Bystander attitudes and behavior;
- Whether reporting individuals disclosed to institution or law enforcement, experiences with that reporting, reasoning for reporting or not;
- General awareness of difference between institutional policy and penal law;
- General awareness of definition of affirmative consent;

Take steps to ensure anonymity of responses.

Publish the results of the survey on the website provided nobody will be identified.

CITATION: § 6445

STATUS

NOTES

Ensure reporting individuals have the following (confidentiality information/policy):

- Information on privileged and confidential resources to contact about sexual assault, domestic/dating violence, stalking;
- Information about counselors and advocates to contact about those crimes;
- A plain language explanation of confidentiality with a minimum verbatim statement:
“Even [institution name] offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a nonconfidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.”;
- Information about how the institution weighs a request for confidentiality against the obligation to provide a safe environment, and that the institution will assist with interim measures and supportive measures regardless of reporting choices;
- Information about public awareness and advocacy events and how information disclosed there is treated by the institution;
- Information about options to anonymously disclose, including NYS hotlines;
- Information about Clery Act counting/reporting, which does not personally identify parties;
- Information about when the institution may notify parents without student consent, including health & safety emergency and when the student is a federal income tax dependent;
- The institution will take proactive steps to address these crimes without identifying those who disclose.
- Notify the individual promptly if the institution moves forward with an investigation despite a request for confidentiality.

CITATION: § 6446

Provide copies of the verbatim statement to appropriate institution officials or have them save it in a note on their phone.

Hotline, resource, and provider information is available through the Office of Victim Services, <https://ovs.ny.concerncenter.com/> and the Office for the Prevention of Domestic Violence, <https://opdv.ny.gov/>

STATUS

NOTES

The institution will seek consent to conduct an investigation.

Request not to move forward generally honored. Determine whether to move forward without individual's consent using the following non-exhaustive factors:

- Accused history of violent and/or repeat behavior;
- Escalation;
- Increased risk of additional acts of violence;
- Use of weapon or force;
- If reporting individual is a minor;
- Other evidence reveals a pattern of perpetration.

CITATION: § 6446(4)

STATUS

Adopt a comprehensive onboarding and ongoing education campaign in compliance with VAWA, and offer training to all new students (first year or transfer), undergraduate, graduate, professional, on these topics:

- Prohibition of these crimes;
- Availability of resources;
- Definitions (including consent, privacy, confidentiality, crime definitions);
- Policies apply equally regardless of protected class/status;
- Role of the Title IX Coordinator, police/security, and other offices;
- Awareness of violence and its impact;
- Bystander intervention and prevention importance;
- Risk assessment and reduction (may include information on drugs and alcohol, communication with trusted friends, availability of institution officials for questions);
- Consequences and sanctions.

CITATION: § 6447(1)-(3)

Note that certain requirements are to offer training while certain groups must complete training.

STATUS

	NOTES
<p>Use multiple methods to provide information and share information with parents on violence prevention.</p> <p>CITATION: § 6447(4)</p>	
STATUS	
<p>Offer training to all students about the crimes, and tailor training for high-risk groups or those with particular needs.</p> <ul style="list-style-type: none"> Examples: International students, student employees, student leaders, online/distance education, others identified as high-risk. <p>CITATION: § 6447(5)</p>	
STATUS	
<p>Student leaders and officers of student organizations and student- athletes (prior to participating in intercollegiate athletic competition).</p> <ul style="list-style-type: none"> Institution can determine how many leaders must complete training for an organization <p>CITATION: § 6447(6)</p>	<p>Student leaders and student athletes required to complete</p>
STATUS	
<p>Requirement to regularly assess programs and policies to determine effectiveness and relevance for students.</p> <p>CITATION: § 6447(7)</p>	
STATUS	

NOTES

Annually report to NYSED the following:

- Number of incidents report to the Title IX Coordinator;
- Of the above, number of reporting individuals who sought to use the institution grievance procedures;
- Of the above, the number of cases processed through the procedures;
- Of the above, the number of respondents found responsible;
- Of the above, description of final sanctions for those found responsible;
- Of the above, the number of respondents found not responsible;
- Description of final sanctions;
- Number of cases closed because respondent withdrew;
- Number of cases closed because complaint was withdrawn.

CITATION: § 6449(1)

Due on or before October 1, consistent with the Clery Act timeline.

<https://www.nysed.gov/college-university-evaluation/compliance-education-law-article-129-and-article-129-b>

STATUS