

# 130th MAINE LEGISLATURE

# FIRST SPECIAL SESSION-2021

**Legislative Document** 

No. 1727

S.P. 572

In Senate, May 19, 2021

# An Act Concerning Sexual Misconduct on College Campuses

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

DAREK M. GRANT Secretary of the Senate

Presented by President JACKSON of Aroostook.
Cosponsored by Representative STOVER of Boothbay and
Senators: DAUGHTRY of Cumberland, MAXMIN of Lincoln, Representatives: BRENNAN
of Portland, McCREIGHT of Harpswell, OSHER of Orono, RECKITT of South Portland.

Sec. 1. 5 MRS	A §12004-I, sub-§12	-C is enacted to read	<b>1</b> :
<u>12-C.</u>			
Education: Higher Education	Higher Education Sexual Misconduct Advisory Commissio	Expenses Only	20-A MRSA §12954
Sec. 2. 20-A M	IRSA c. 441 is enacted	d to read:	
	<b>CHAP</b>	TER 441	
SEXUAL MISC	CONDUCT AT INSTI	TUTIONS OF HIG	HER EDUCATION
§12951. Definitions	į		
As used in this have the following m	*	text otherwise indic	eates, the following terms
can be revoked at a		e consent" does not	sent to sexual activity that include silence, lack of
higher education, inc who was employed lor contracted employ	luding a full-time, partoy an institution of high	time or contracted enter education, include of absence or term	ployed by an institution of mployee, or an individual ding a full-time, part-time inated the employment as other reason.
3. Institution of	f higher education. "I	nstitution of higher	education" or "institution'
located in this State,		niversity of Maine S	inder chapter 409 that is System, any college in the ademy.
			or employee who reports at an institution of higher
	party. "Responding part of sexual misconduct		lual who has been accused igher education.
by each institution in sexual violence, dating	its code of conduct and ng violence, domestic v	consistent with appolence, gender-base	lowing conduct as defined licable federal definitions d violence, violence based ault, sexual harassment of
			ct climate survey" means
the survey developed	l pursuant to section 12	954, subsection 7.	

Be it enacted by the People of the State of Maine as follows:

- **8. Student.** "Student" means an individual who is enrolled in a credit-bearing program at an institution of higher education or who was enrolled in a credit-bearing program at an institution of higher education but has taken a leave of absence or has withdrawn from the program as a result of having been a victim of sexual misconduct or for any other reason.
- 9. Title IX coordinator. "Title IX coordinator" means the employee at an institution of higher education who is responsible for institutional compliance with the so-called Title IX provisions of the federal Education Amendments of 1972, as amended.
- <u>10. Trauma-informed response.</u> "Trauma-informed response" means a response by an individual who has received specific training in the complexities of the trauma caused by sexual misconduct including training on:
  - A. The neurobiological impact of trauma;
  - B. The influence of societal stereotypes or other misconceptions relating to the causes and impacts of trauma on an individual experiencing the trauma caused by sexual misconduct;
  - C. Methodologies for avoiding perpetuation of the trauma caused by sexual misconduct; and
  - D. How to conduct an effective investigation of trauma.

#### §12952. Adoption of policies

- 1. Adoption of policy required. Each institution of higher education shall adopt a policy on sexual misconduct, referred to in this section as "the policy," in accordance with this section and consistent with applicable state and federal law.
- 2. Development of policy. The policy must be developed in coordination with the institution's Title IX coordinator and a local rape crisis center or domestic violence support center. An institution may consider input from various internal and external entities including, but not limited to, administrators, personnel affiliated with on-campus and off-campus health care centers, confidential resource advisors, residence life staff, students, local law enforcement agencies and the district attorney having jurisdiction in the municipality where the institution of higher education's primary campus is located. The policy must be culturally competent and reflect the diverse needs of all students.
  - 3. Content of policy. The policy must include, but is not limited to:
  - A. Procedures by which students and employees at the institution may report or disclose alleged incidents of sexual misconduct regardless of where the alleged incident occurred;
  - B. Information on where a reporting party may receive immediate emergency assistance following an alleged incident of sexual misconduct including, but not limited to:
    - (1) The name and location of the nearest medical facility where a reporting party may request that a medical forensic exam be administered by a trained sexual violence forensic health care provider, including information on transportation options and information on reimbursement for travel costs, if any;
    - (2) The contact information for a local rape crisis center and a local domestic violence support center and a description of the services provided by the centers;

1 (3) The telephone number and website for a national 24-hour hotline and any state 2 or local resources that provide information on sexual misconduct; and 3 (4) Information on any programs that may financially assist a reporting party with 4 the cost of emergency medical assistance; 5 C. Descriptions of the types of and contact information for counseling, health, safety, 6 academic and other support services available within the local community or region or 7 through a rape crisis center or domestic violence support center, including but not 8 limited to the name and contact information for organizations that support responding parties accused of sexual misconduct, the name and contact information for a 9 10 confidential resource advisor under section 12956 and a description of the role of and services provided by the confidential resource advisor, and the name and contact 11 information for the institution's Title IX coordinator; 12 13 D. The rights and obligations of students and employees to: 14 (1) Notify or decline to notify law enforcement, including campus, local and state 15 police, of an alleged incident of sexual misconduct; 16 (2) Receive assistance from campus authorities in making any notification under 17 subparagraph (1); and 18 (3) Obtain a court or institution-issued protection order against a responding party 19 involved with the alleged incident of sexual misconduct; 20 E. The process for requesting supportive measures reasonably available from the 21 institution including, but not limited to, options for changing academic, living, campus 22 transportation or working arrangements or taking a leave of absence in response to an 23 alleged incident of sexual misconduct, how to request those changes and the process to 24 have any such measures reviewed; 25 F. The contact information for the closest local, state and federal law enforcement 26 agencies with jurisdiction over matters involving sexual misconduct, procedures for 27 students to notify the institution that a protection order has been issued under state or 28 federal law and the institution's responsibilities upon receipt of such notice; 29 G. A summary of the institution's procedures for investigating, adjudicating and 30 resolving sexual misconduct complaints against students, including an explanation of 31 all procedures that must be followed to obtain investigatory reports and gather 32 evidence, and potential sanctions or penalties that may be imposed. The policy must 33 provide that: 34 (1) The procedure be uniformly applied for all disciplinary proceedings relating to 35 any claims of sexual misconduct; 36 (2) Timely and detailed notice be given to the reporting party and the responding 37 party describing the date, time and location of the incident, if known, and a 38 summary of the factual allegations concerning the incident; 39 (3) An investigation, including any hearings and resulting disciplinary proceedings, be conducted by an individual who receives not less than annual 40 41 training on issues relating to sexual misconduct, investigatory procedures and 42 hearing procedures to protect the safety and rights of students and promote 43 accountability, objectivity, impartiality and a trauma-informed response;

1 (4) The reporting party and the responding party may consult with and be 2 accompanied by an advisor or support person of that party's choice, which may 3 include an advocate or counsel, during any meetings and disciplinary proceedings 4 including during any meeting with the individual conducting the investigation 5 pursuant to subparagraph (3) or fact finding for the institution. The policy may include guidelines regarding the extent to which the advisor or support person for 6 7 each party may participate in a meeting or disciplinary proceeding as long as any 8 limitations on participation apply equally to both parties. The policy must include 9 reasonable measures to provide for the involvement of the advisor or support 10 person for each party as long as providing for the involvement of the advisor or 11 support person does not significantly delay a meeting or disciplinary proceeding; 12 (5) The reporting party and the responding party be provided with a copy of the 13 policy regarding the submission and consideration of evidence that may be used 14 during a disciplinary proceeding and have equal opportunity to present evidence 15 and witnesses on the party's behalf during a disciplinary proceeding. Each party 16 must be provided with timely and equal access to all relevant evidence used in the 17 determination of a sanction or penalty; 18 (6) Appropriate restrictions be placed on evidence considered by the fact finder 19 including, but not limited to, the use of evidence of prior sexual activity or 20 character witnesses; 21 (7) The reporting party and the responding party be informed in writing of the 22 results of a disciplinary proceeding not later than 7 business days after a final 23 determination of a complaint, not including time for appeal, if any, unless good 24 cause for additional time is shown. The reporting party and responding party must 25 be informed of the process, if any, for appealing the decision; 26 (8) If any appeal is allowed based on a claim of procedural errors, previously 27 unavailable relevant evidence that could significantly impact the outcome of a 28 disciplinary proceeding or the sanction's or penalty's being disproportionate to the 29 offense, the reporting party and the responding party be provided with an equal 30 opportunity to make the appeal; 31 (9) The institution may not publicly disclose the identity of the reporting party or 32 the responding party, except as necessary to carry out a disciplinary proceeding or 33 as otherwise permitted under state or federal law; and 34 (10) It is communicated that the institution's disciplinary proceedings may not 35 serve as a substitute for the criminal justice process. 36 The policy must include a clear statement advising students of the procedures under 37 the policy; 38 H. A summary of the institution's employee disciplinary process as it pertains to sexual 39 misconduct: and 40 I. The range of sanctions or penalties the institution may impose on students and 41 employees found responsible for a violation of the applicable institutional policy 42 prohibiting sexual misconduct.

**4.** Adoption of and amendments to the policy. When adopting or amending a policy,

an institution shall provide an opportunity for comment and a reasonable length of time in

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which comments will be accepted. The institution shall provide the draft policy or proposed substantive amendments by electronic or regular mail to internal and external entities, with instructions on how to comment and the reasonable length of time in which comments will be accepted. Once an institution has adopted a policy, the opportunity for review and comment by internal and external entities applies only to substantive amendments in the policy.

#### **5. Public access.** The policy must be publicly accessible:

- A. On each campus of the institution in locations where students regularly congregate, including, but not limited to, dining and recreational facilities, libraries, bookstores, student unions and student centers and the common areas of dormitories and other student housing locations; and
- B. On each institution's publicly accessible website. The policy must be posted on the website no later than the first week of classes in each academic year.
- The policy must also be provided upon request to an applicant, student or employee of the institution.
- 6. Confidentiality. The identity of a reporting party and a responding party and all information relating to an incident of sexual misconduct is confidential and may not be disclosed, except as necessary to carry out a disciplinary process or as otherwise permitted under state or federal law.

#### §12953. Notice to proceed

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Each institution shall provide a reporting party and a responding party with written notice of the institution's decision to hold a disciplinary proceeding regarding an allegation of sexual misconduct sufficiently in advance of a disciplinary proceeding to provide the reporting and responding parties with the opportunity to meaningfully exercise their rights. The disciplinary proceeding must provide due process and be prompt, fair and impartial and include the opportunity for both parties to present witnesses and other evidence. The written notice must include the information required to be posted on the institution's publicly accessible website pursuant to section 12952, subsection 5.

# **§12954. Higher Education Sexual Misconduct Advisory Commission**

- **1. Establishment.** The Higher Education Sexual Misconduct Advisory Commission, established by Title 5, section 12004-I, subsection 12-C and referred to in this chapter as "the commission," is created for the purpose of developing and advising the commissioner on a base sexual misconduct climate survey for dissemination to institutions of higher education and providing recommendations on the content, timing and application of the survey.
  - **2. Membership.** The commission consists of the following 20 members:
  - A. The commissioner or designee;
  - B. The Commissioner of Health and Human Services or designee;
- C. The following 7 members appointed by the commissioner:
  - (1) Two members representing a statewide coalition against sexual assault;
- 41 (2) A member representing an organization promoting racial equity and justice;

1	(3) A member representing a coalition of Wabanaki women;
2	(4) A member representing a statewide organization for disability rights;
3 4	(5) A member representing a statewide organization for lesbian, gay, bisexual and transgender people of the State; and
5 6	(6) A member representing a coalition of students and victims against sexual violence; and
7	D. The following 11 members appointed by the Governor:
8	(1) A student attending a public institution of higher education in this State;
9	(2) A student attending a private institution of higher education in this State;
10	(3) A student attending an institution in the Maine Community College System;
11 12	(4) A representative of the University of Maine System recommended by the Chancellor of the University of Maine System;
13 14	(5) A representative of a private institution of higher education recommended by a Maine association of independent colleges;
15 16	(6) A representative of the Maine Community College System recommended by the President of the Maine Community College System;
17	(7) A Title IX coordinator at a public institution of higher education in this State;
18	(8) A Title IX coordinator at a private institution of higher education in this State
19 20	(9) A researcher with experience in the development and design of sexual misconduct climate surveys;
21 22	(10) A researcher of statistics, data analytics or econometrics with experience in higher education survey analysis; and
23 24	(11) A representative of a health center at an institution of higher education with experience dealing with campus sexual violence.
25 26	3. Staffing. The department shall provide appropriate staffing assistance to the commission.
27 28 29 30 31	4. Terms; vacancies; compensation. Each appointed member serves a 2-year term and continues serving until either reappointed or the member's successor is appointed. In the event of a vacancy on the commission, the member's unexpired term must be filled through an appointment by the appointing authority for the vacant seat for the balance of the unexpired term. Members are compensated in accordance with Title 5, chapter 379.
32	5. Quorum. A quorum of the commission consists of 11 members.
33 34 35 36	6. Duties. Beginning March 31, 2022, and biennially thereafter, the commission shall provide to the commissioner the sexual misconduct climate survey developed in accordance with subsections 7 and 8 and any related recommendations, including but no limited to recommendations on achieving statistically valid response rates.
37 38	7. Development of sexual misconduct climate survey. The commission mus develop the sexual misconduct climate survey by:

- A. Using best practices from peer-reviewed research and in consultation with individuals with expertise in the development and use of sexual misconduct climate surveys by institutions of higher education;
- B. Reviewing sexual misconduct climate surveys that have been developed and previously used by institutions;
- 6 C. To ensure the adequacy and appropriateness of the proposed content, providing
  7 opportunities for written comment from organizations that work directly with victims
  8 and survivors of sexual misconduct;
- 9 <u>D. Consulting with institutions on strategies for optimizing the effectiveness of the survey; and</u>
- E. Accounting for the diverse needs and differences of the State's institutions of higher education.
- 13 **8. Information to be gathered.** The sexual misconduct climate survey must collect
  14 anonymous responses, may not require the disclosure of personally identifiable information
  15 and must be designed to gather the following information:
  - A. The number of incidents, both reported and unreported, of sexual misconduct at each institution of higher education;
- B. The timing and location of incidents of sexual misconduct;

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- 19 <u>C. Student awareness of the institution's policies and procedures related to sexual misconduct;</u>
- D. Whether a student reported sexual misconduct and, if so, to which campus resource or law enforcement agency the report was made, and, if not, the reason for the student's decision not to report;
- E. Whether a student was informed of or referred to local, state, campus or other resources or victim support services, including appropriate medical care and legal services;
- F. Whether a student was provided the option of protection from retaliation, access to school-based accommodations and criminal justice remedies;
- G. Contextual factors of each incident of sexual misconduct, such as the involvement
   of force, incapacitation or coercion;
- H. Demographic information that could be used to identify at-risk groups including but not limited to gender, race and sexual orientation;
- I. Perceptions of campus safety among members of the campus community and confidence in the institution's ability to protect against and respond in a timely and trauma-informed manner to incidents of sexual misconduct;
- J. Whether a reporting party was satisfied with the institution of higher education's response to the reporting party's report;
- K. Whether the student has chosen to withdraw or take a leave of absence from the
   institution or transferred to another institution due to being either the reporting party or
   the responding party in an allegation of sexual misconduct;

- L. Whether the student has withdrawn from any classes or been placed on academic probation as a result of an incident of sexual misconduct; and
  - M. Answers to any other questions developed by the commission.

#### §12955. Sexual misconduct climate survey dissemination; data collection; reporting

- 1. Dissemination; conduct. The commissioner shall provide the sexual misconduct climate survey biennially to each institution, and each institution shall biennially conduct the sexual misconduct climate survey on each campus. Each institution may append campus-specific questions to the survey, as long as any additional questions do not require the disclosure of any personally identifiable information and are not unnecessarily traumatizing for victims of sexual misconduct. All students must be offered an opportunity to complete the sexual misconduct climate survey.
- 2. Report to commissioner; website. Within 120 days after completion of the sexual misconduct climate survey, each institution shall submit a summary of the results and the raw data, with any personally identifiable information removed or redacted, supporting the results to the commissioner and post the following on the institution of higher education's publicly accessible website:
  - A. The summary of the results of the survey;

- B. The annual security report completed pursuant to 20 United States Code, Section 1092(f); and
- C. A link to the department's statewide sexual misconduct climate survey data pursuant to subsection 3.
- 3. Data collection. The department shall establish a data repository for all summaries and raw data of sexual misconduct climate surveys submitted by institutions. The department shall ensure that the sexual misconduct climate survey data submitted by all institutions is available to the public in an easily accessible manner on the department's publicly accessible website.

#### §12956. Confidential resource advisors

- 1. Confidential resource advisor designated. Each institution shall designate at least one confidential resource advisor to provide emergency and ongoing support to survivors of sexual violence. The confidential resource advisor must be designated based on experience in sexual violence or domestic violence advocacy and a demonstrated ability to effectively provide victim services related to sexual misconduct. The confidential resource advisor may have another role at the institution of higher education, but may not be a student or a Title IX coordinator.
- 2. Additional designation; partnership. Each institution of higher education shall designate existing categories of employees that may also serve as confidential resource advisors. This subsection may not be construed to limit an institution of higher education from designating a new or existing employee as a confidential resource advisor. An institution of higher education may partner with a local, state or national victim advocacy organization to provide a confidential resource advisor under this section. An institution of higher education that enrolls fewer than 1,000 residential students may partner with another institution of higher education or rape crisis center within the State to provide the services under this section. Any partnership entered into under this subsection must ensure

3 **3. Training.** A confidential resource advisor must receive the following training: 4 A. Prior to appointment as a confidential resource advisor, 40 hours of training on sexual violence; 5 6 B. Training regarding unconscious biases related to race, gender and sexuality; 7 C. Training regarding awareness and prevention of sexual misconduct, federal policies, the institution's policy under section 12952 and trauma-informed response; 8 9 and 10 D. Twenty hours of educational training annually on issues related to sexual violence. 11 **4.** Coordination. A confidential resource advisor shall coordinate with on-campus, if 12 any, and off-campus rape crisis centers and domestic violence support centers within a reasonable time after being designated as a confidential resource advisor. 13 14 5. Information and resources. A confidential resource advisor is responsible for 15 providing the following information and resources regarding incidents of sexual misconduct to students and employees: 16 17 A. Reporting options and the probable effects of each option; 18 B. Counseling services available on campus and through a local rape crisis center or 19 domestic violence support center; 20 C. Medical and health services available on campus and off campus: 21 D. When requested, campus escort services for security; 22 E. Available academic and residential life accommodations: 23 For students considering temporary or permanent withdrawal or reduced enrollment, student loan counseling including but not limited to information regarding 24 loan deferment, forbearance or other applicable student loan programs; 25 26 G. The institution's investigative and disciplinary process; 27 H. The legal process of local, state and federal law enforcement agencies; 28 I. That the institution of higher education's disciplinary process is not to be considered 29 a substitute for the criminal justice process; and 30 J. Any limits on the ability of the confidential resource advisor to keep private or 31 confidential the information of the student. 32 **6.** Additional actions. A confidential resource advisor, regarding an alleged incident of sexual misconduct: 33 34 A. May, if appropriate and directed by a student, assist the student in contacting or 35 reporting to campus or local law enforcement agencies; 36 B. Shall notify a student of the student's rights and the institution's responsibility 37 regarding a protection order, no-contact order or any other lawful order issued by the institution or by a criminal, civil or tribal court; 38

that the confidential resource advisor is available to a student within a reasonable distance

from the student's institution of higher education.

C. May not be required to report the incident to the institution or a law enforcement agency unless otherwise required to do so by state or federal law;

- D. May attend an administrative adjudication proceeding or the institution's disciplinary proceeding as the advisor or support person of a student's or employee's choice;
- E. May disclose confidential information only with the prior written consent of the student or employee who shared the information and only if required by state or federal law;
- F. May not provide services to both the reporting party and the responding party to the incident of sexual misconduct; and
- G. May not act as a counselor or therapist unless the confidential resource advisor is a licensed counselor in this State and the student engages the confidential resource advisor in that capacity.
- 7. Notice. Notice to a confidential resource advisor of an alleged incident of sexual misconduct or a confidential resources advisor's performance of a service under this section may not be considered actual or constructive notice of such an alleged incident to the institution of higher education at which the confidential resource advisor is employed or provides contracted services.
- **8. Retaliation.** An institution may not discipline, penalize or otherwise retaliate against a confidential resource advisor for representing the interest of the student by advocating for the student's need for sexual assault crisis services or campus law enforcement services.
- **9. Privileged communications.** Notwithstanding any provision of law to the contrary. except with regard to reporting, cooperating in an investigation or giving evidence pursuant to Title 22, chapter 958-A or 1071, or except at the request or with the consent of a victim of sexual assault, a confidential resource advisor may not be required to testify in any civil or criminal action, suit or proceeding at law or in equity about any information that the confidential resource advisor may have acquired in providing sexual assault counseling services. A confidential resource advisor or a rape crisis center may not be required to disclose to the court any records, notes, memoranda or documents containing confidential communications. When a court in the exercise of sound discretion determines the disclosure necessary to the proper administration of justice, information communicated to, or otherwise learned by, that confidential resource advisor in connection with the provision of sexual assault counseling services is not privileged and disclosure may be required. Nothing in this subsection prohibits a confidential resource advisor from testifying in a civil or criminal proceeding involving a person to whom the confidential resource advisor has provided services if that person has provided specific written consent to that confidential resource advisor.
- 10. Confidential criminal history record information. Notwithstanding any provision of law to the contrary, a criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information to a confidential resource advisor for the purpose of planning for the safety of a victim of sexual assault. A confidential resource advisor who receives confidential criminal history record

information pursuant to this subsection shall use it solely for the purpose authorized by this subsection and may not further disseminate the information.

## §12957. Awareness programming

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An institution of higher education, with guidance from its Title IX coordinator, local law enforcement and the rape crisis center or the domestic violence support center identified in the institution's policy under section 12952, shall provide mandatory annual sexual misconduct prevention and awareness programming for all students and all employees of the institution that includes:

- 1. Affirmative consent. An explanation of affirmative consent as it applies to sexual activity and sexual relationships;
- **2. Affirmative consent; drugs and alcohol.** The role drugs and alcohol play in an individual's ability to provide affirmative consent;
- 3. Options for reporting. Information on options relating to the reporting of an incident of sexual misconduct, the probable effects of each option and the methods to report an incident of sexual misconduct, including confidential and anonymous disclosure;
- 4. Institution's procedures; sanctions and penalties. Information on the institution's procedures for resolving sexual misconduct complaints and the range of sanctions or penalties the institution may impose on students and employees found responsible for a violation;
- <u>5. Contact information.</u> The name, contact information and role of the confidential resource advisor, as well as the name and contact information of all other confidential personnel at the institution;
- **6. Bystander intervention and risk reduction.** Strategies for bystander intervention and risk reduction;
- 7. Ongoing prevention and awareness. Opportunities for ongoing sexual misconduct prevention and awareness programming, including through ongoing campaigns; and
- **8.** Sensitivity; marginalized groups. An approach that recognizes and is sensitive to the fact that members of certain marginalized groups are more likely to experience sexual misconduct.

# §12958. Training for individuals involved in the disciplinary process

- 1. General requirement. Each institution of higher education shall ensure that its Title IX coordinator and members of its campus police force or campus safety personnel employed by the institution of higher education undergo annual training in awareness of sexual misconduct and trauma-informed responses.
- 2. Requirements for involvement in disciplinary process. Any individual who participates in the implementation of an institution's disciplinary process under this chapter, including but not limited to any individuals responsible for resolving complaints of reported incidents of sexual misconduct, must be trained or have experience in handling sexual misconduct complaints and the operations of the institution's disciplinary practice. The training must include, but is not limited to:

- A. Information about providing a trauma-informed response when working with and interviewing victims of an alleged incident of sexual misconduct;
  - B. Information on particular types of conduct that constitute sexual misconduct, including same-sex dating violence, domestic violence, sexual assault and stalking;
- C. Information on affirmative consent and the role drugs and alcohol may play in an individual's ability to consent;
  - D. The effects of trauma, including any neurobiological impact on an individual;
    - E. Cultural competency training regarding how sexual misconduct may impact students differently depending on factors that contribute to a student's cultural background, including national origin, sex, ethnicity, religion, gender identity, gender expression and sexual orientation;
      - F. Methods of communicating sensitively and compassionately with a reporting party including, but not limited to, an awareness of responding to a reporting party with consideration of that party's cultural background and providing services to or assisting in locating services for the reporting party and communicating an awareness of the emotional impact of being wrongly accused; and
      - G. Training and information regarding how dating violence, domestic violence, sexual assault and stalking may impact students with developmental or intellectual disabilities.

#### §12959. Reporting

- 1. Report. By October 1, 2021 and annually thereafter, an institution of higher education shall prepare and submit to the commissioner, the Commissioner of Health and Human Services and the joint standing committee of the Legislature having jurisdiction over higher education matters a report that includes the following:
  - A. The total number of alleged incidents of sexual misconduct reported to the institution's Title IX coordinator by a student or employee of the institution against another student or employee of the institution;
  - B. The number of law enforcement investigations initiated in response to complaints of sexual misconduct brought by students or employees of the institution against another student or employee of the institution, if known;
  - C. The number of students found responsible for violating the institution's policy prohibiting sexual misconduct;
- D. The number of students found not responsible for violating the institution's policy prohibiting sexual misconduct;
- E. The number of sanctions or penalties imposed by the institution as a result of a finding of responsibility for violating the institution's policy prohibiting sexual misconduct. The report must provide information in a manner that keeps confidential any personally identifiable information in compliance with state and federal privacy laws; and
- F. The number of students or employees who used a confidential resource advisor without instigating a Title IX investigation. The report must provide information in a

manner that keeps confidential any personally identifiable information in compliance with state and federal privacy laws.

## §12960. Immunity

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A reporting party or a witness who requests an investigation of sexual misconduct may not be subject to a disciplinary proceeding or sanction or penalty for a violation of the institution's student conduct policy related to drug or alcohol use, trespassing or unauthorized entry of the institution's facilities or violation of the institution's policy under section 12952 unless the institution determines that the report was not made in good faith or that the violation was egregious. An egregious violation must include, but not be limited to, taking an action that places the health and safety of another person at risk.

# §12961. Memoranda of understanding

- <u>1. Requirement.</u> An institution of higher education shall enter into and maintain a memorandum of understanding with a Department of Health and Human Services-funded rape crisis center or domestic violence support center to:
  - A. Assist in developing the institution's policy under section 12952, programming and trauma-informed response training regarding sexual misconduct involving students or employees;
  - B. Provide an off-campus option for students and employees of the institution to receive free and confidential sexual assault crisis services, including access to a sexual assault nurse examiner, if available, or free and confidential domestic violence crisis services in response to sexual misconduct;
  - C. Ensure that a student or employee of the institution may access free and confidential counseling and advocacy services either on campus or off campus;
  - D. Ensure that a student or employee of the institution has access to free transportation provided by the institution when seeking off-campus confidential counseling and advocacy services; and
  - E. Ensure cooperation and training between the institution and the rape crisis center or domestic violence support center regarding the roles that the institution, rape crisis center and domestic violence support center should play in responding to reports and disclosures of sexual misconduct against students and employees of the institution and the institution's protocols for providing support and services to such students and employees.
- 2. Confidential victim services; fees. A memorandum of understanding may include an agreement, including a fee structure, between the rape crisis center or domestic violence support center under subsection 1 and the institution of higher education to provide confidential victim services. Confidential victim services may include case consultation and training fees for confidential resource advisors, consultation fees for the development and implementation of sexual misconduct education and prevention programs for students, the development of trauma-informed response staff training and prevention curricula and private on-site office space for an advocate from the rape crisis center or domestic violence support center to meet with students or employees.
- 3. Waiver of requirements. The department may waive the requirements of this section in the case of an institution that demonstrates that it acted in good faith to enter into

and maintain a memorandum of understanding pursuant to this section but was unable to obtain a signed memorandum. In the event that an institution is unable to enter into and maintain a memorandum of understanding pursuant to this section, the institution must provide contact information for local rape crisis centers or domestic violence support centers on its publicly accessible website.

#### §12962. Enforcement; penalty; appeal

An institution may not overturn or readjudicate a Title IX decision without the approval of the commissioner.

Upon a determination by the commissioner that an institution of higher education has violated or failed to carry out any provision of this chapter or any rule adopted under this chapter and after reasonable notice and opportunity for a hearing, the commissioner may impose an administrative penalty for each violation not to exceed \$150,000, adjusted annually for inflation by rule, or 1% of the institution's annual operating budget, whichever is lower.

There is established within the department the Sexual Misconduct Response Fund, referred to in this section as "the fund." The fund is nonlapsing. The commissioner shall deposit any administrative penalties collected under this section into the fund. All funds in the fund must be used exclusively to implement this chapter.

#### §12963. Rulemaking

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The commissioner shall adopt rules to implement this chapter, including but not limited to deadlines for dissemination of sexual misconduct climate surveys and collection of survey information, solicitation methods designed to achieve the highest practicable response rate and collection and publication of statistical information gathered from institutions of higher education. The commissioner shall also adopt rules to establish the inflation adjustment for the cap on the administrative penalty under section 12962. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill does the following.

- 1. It requires institutions of higher education in the State to adopt sexual misconduct policies.
- 2. It creates the Higher Education Sexual Misconduct Advisory Commission to develop a biennial sexual misconduct climate survey to be provided to the Commissioner of Education and disseminated to institutions of higher education to conduct the surveys on each of their campuses.
- 3. It requires institutions of higher education to designate confidential resource advisors and provides confidential resource advisors with qualified privilege;
- 4. It requires training for confidential resource advisors and individuals involved in the institution's disciplinary process.
- 5. It requires institutions of higher education to report to the joint standing committee of the Legislature having jurisdiction over education matters, the Commissioner of

Education and the Commissioner of Health and Human Services on incidents of sexual misconduct on their campuses.

- 6. It provides certain specific immunity to students who report or request investigations into incidents of sexual misconduct.
- 7. It requires institutions of higher education to enter into memoranda of understanding with Department of Health and Human Services-funded rape crisis centers or domestic violence support centers; this requirement may be waived upon a showing of a good faith effort to comply.
- 8. Provides the Commissioner of Education enforcement authority and provides that a civil penalty of not more than \$150,000 or 1% of an institution's operating budget, whichever is lower, may be adjudged for a violation.