

New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Compliance With the Enough is Enough Act

State Education Department
Division of State Police



Report 2017-S-38

January 2018

Executive Summary

Purpose

To determine if the State Education Department (SED) and Division of State Police (DSP) are complying with the requirements under the Enough is Enough Act (Act). The audit covers the period July 7, 2015 to September 26, 2017.

Background

The Act was signed into law on July 7, 2015, establishing policies to prevent and respond to sexual assault on college campuses and assure students of their right to have sexual violence investigated and prosecuted. The Act amended the Education Law to add Article 129-B, which requires colleges and universities that maintain campuses in New York to implement sexual assault, dating violence, domestic violence, and stalking prevention and response policies, and amended rule 3016 of the Civil Practice Law and Rules to maintain student anonymity. Institutions are also required to adopt an amnesty policy for alcohol and drug use; a students' bill of rights; and comprehensive training requirements for administrators, staff, and students. Institutions must annually submit to SED their aggregate data on reported incidents of sexual violence as well as their adjudication and handling.

The Act charged SED and DSP with responsibilities to both assist institutions and ensure their compliance with its provisions. SED must receive a copy of relevant rules and policies adopted by institutions and their annual certifications of compliance, and issue regulations on reporting annual incident data. SED must also issue a report to the Governor and Legislature regarding the incident data collected from institutions; audit institutions to ensure compliance with the Act; and post information and statistics regarding institutions' compliance with Article 129-B on its website. DSP is charged with establishing a sexual assault victims unit to assist colleges, universities, and localities with handling sexual assaults and related crimes; providing training to campus communities; and giving unit staff advanced training in responding to sexual assaults and related crimes.

Key Findings

- SED has made progress in complying with some of its key responsibilities under the Act; however, it has fallen behind meeting or completing others.
- SED's implementation time frames resulted in delays in its meeting certain requirements, including reporting critical incident data to the Governor and Legislature. SED may not meet the reporting requirement until late 2019 – two years later than the Act requires.
- DSP has met its responsibilities under the Act. DSP created a Campus Sexual Assault Victims Unit in December 2015 that has received specialized training; given training to campus communities; and responded to cases of sexual assault and other incidents at institutions or involving college students.

Key Recommendation

To SED:

- As soon as is practicable:
 - Collect aggregate incident data from covered institutions; and
 - Using the information acquired, issue a report on sexual assault incident data to the Governor and Legislature.

Other Related Audit/Report of Interest

[State Education Department: Implementation of the Dignity for All Students Act \(2016-S-28\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

January 24, 2018

Ms. MaryEllen Elia
Commissioner
State Education Department
89 Washington Avenue
Albany, NY 12234

Lt. Col. George P. Beach II
Superintendent
Division of State Police
1220 Washington Avenue, Building 22
Albany, NY 12226

Dear Ms. Elia and Superintendent Beach:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Compliance With the Enough is Enough Act*. The audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

The Enough is Enough Act (Act) was signed into law on July 7, 2015, establishing policies to prevent and respond to sexual assault on college campuses and assure students of their right to have sexual violence investigated and prosecuted. The Act amended the Education Law to add Article 129-B, which requires all covered institutions to implement sexual assault, dating violence, domestic violence, and stalking prevention and response policies and procedures, and amended rule 3016 of the Civil Practice Law and Rules to protect student privacy in legal challenges of college or university disciplinary findings. Covered institutions are defined as colleges or universities that maintain a campus in New York and that are chartered by the Regents or incorporated by a special act of the Legislature. Additionally, covered institutions are required to adopt or implement a policy that protects individuals from code of conduct action for violations of alcohol and drug use policies at or near the time the offense occurred. They must also adopt or implement a students' bill of rights and comprehensive training requirements for administrators, staff, and students, and annually submit aggregate data on reported incidents of sexual violence, as well as their adjudication and handling, to the State Education Department (SED). The aggregate data must include, for example, the number of reported incidents; the number of reporting individuals who sought the school's judicial or conduct process; and a description of the final sanctions imposed for incidents where a respondent was found responsible. According to SED's records, there are 242 institutions covered under the Act.

The Act's language, as codified in Article 129-B, includes time frames and/or deadlines for institutions and SED to accomplish key requirements. These time frames and/or deadlines are dependent on when the related provision took effect. Some of the Act's provisions took effect at the time of its enactment on July 7, 2015, and others took effect either 90 days after enactment (October 5, 2015) or one year after enactment (July 7, 2016). Both SED and the Division of State Police (DSP) have responsibilities to ensure institutions' compliance with the Act's policy, procedure, training, and data reporting requirements and to ensure sexual assault and related crimes are handled in accordance with its provisions. SED's responsibilities are as follows:

- Beginning July 1, 2016: receive copies of relevant written rules and policies institutions have adopted, and their annual certificates of compliance;
- By October 5, 2016: issue regulations for institutions' annual incident reporting, including incidents of domestic violence, dating violence, stalking, and sexual assault;
- By October 5, 2017: issue a report of incident statistics to the Governor and Legislature based on the data collected from institutions;
- At any time after September 1, 2016: conduct random audits of institutions to ensure compliance with the Act; and
- Post information and statistics regarding institutions' compliance on the SED website.

DSP is charged with establishing a Campus Sexual Assault Victims Unit to assist campuses and localities in handling sexual assaults and related crimes, and with providing training to campus communities. Unit staff must have advanced incident response training specifically addressing campus sexual assault and related crimes.

The Act included an appropriation of \$4.5 million to DSP to support its additional functions. It did not include an appropriation to SED specific to carrying out its responsibilities under the Act.

Audit Findings and Recommendation

We found that while SED has made progress in complying with some of its key responsibilities under the Act, it has fallen behind in meeting or completing others. SED met its obligation to receive institutions' rules, policies, and annual certificates of compliance. Through a Memorandum of Understanding with several agencies, it also carried out required audits of institutions' compliance. However, SED is implementing certain requirements, such as its reporting of critical incident data, on dates later than required by the Act. These delays diminish the Act's effectiveness.

We found that DSP has met its responsibilities under the Act. In December 2015 DSP created a Campus Sexual Assault Victims Unit, which has provided training to campus communities and assisted in handling cases of sexual assault and other violent incidents.

SED Compliance With the Act

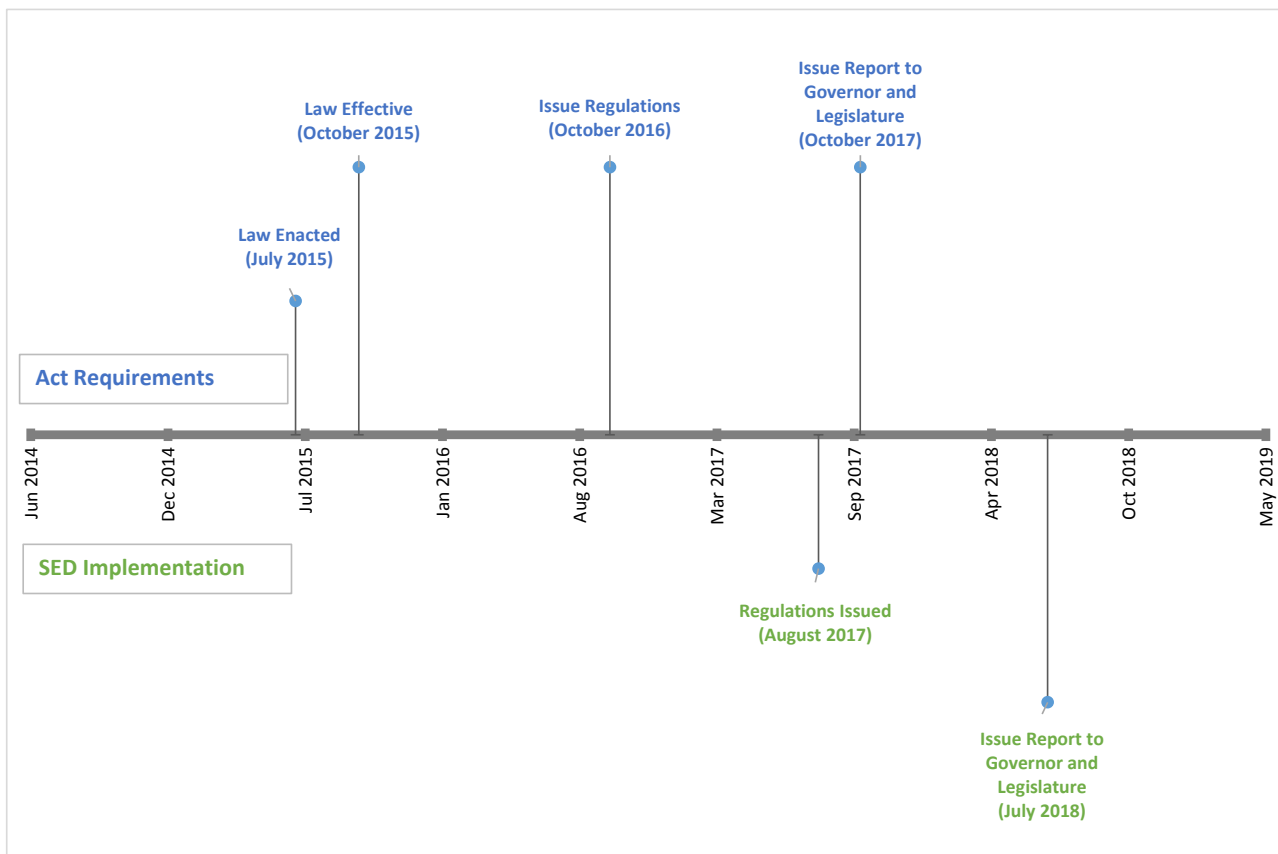
Collecting Institution Policies, Certificates of Compliance, and Incident Data; Issuing Regulations; Reporting

SED received the rules and policies, as well as annual certificates of compliance, for nearly all covered institutions that were operating in 2016 and required to file. However, there were delays in its implementing other requirements. Under the Act, Article 129-B took effect October 5, 2015. Therefore, on or before October 5, 2016 (one year after the Article 129-B effective date), SED should have issued regulations regarding the collection of institutions' annual aggregate sexual assault and dating and domestic violence data. However, it did not issue the final regulations until August 2, 2017, and this important guidance to the colleges and universities was delayed nearly ten months. SED officials stated that the legislative intent was to allow SED until July 2017, two years after the Act was signed into law, to issue regulations.

SED also did not issue the report to the Governor and Legislature that was first required October 5, 2017. The report should have included information about the schools' incident data collected to date. However, SED regulations don't require institutions to submit their first batch of aggregate incident data until October 1, 2019 (for the period January 1 to December 31, 2018). SED officials interpret the Act as requiring the report to the Governor and Legislature in 2018, not 2017. Officials also stated that they intend to issue a preliminary report in July 2018. However, given that SED regulations don't require institutions to submit aggregate incident data until more than a year after this date, they may have received little or no incident data from schools by then, casting doubt on the potential value of the report for evaluation and decision-making purposes.

Given SED's plan to collect school data by October 2019, it may not be able to issue a complete report of these important incident statistics until late 2019 at the earliest. Since SED officials have stated that they already modified an existing system that will soon be ready for the institutions to use to submit their data, we question why its first collection is scheduled for nearly two years from now. If SED modified its data collection deadline to 2018 rather than 2019, the report might be available at a time closer to that established in the Act.

The difference between the due dates for several requirements as stated in the Act and SED's actual or planned implementation dates is illustrated in the timeline below.



Institutional Compliance Audits

We found SED met its obligation to perform audits of institutions' compliance with the Act. In May 2017 SED entered into a Memorandum of Understanding (MOU) with the New York State Office of Campus Safety (OCS), the New York State Office of Victim Services (OVS), and DSP to carry out this function. In June 2017, OCS sent a Notice of Audit to institutions requesting documentation to support their compliance with portions of the Act. In September 2017, OCS released a preliminary report (Phase I) of the multiagency team's audit results, which covered a paper review of 242 colleges' and universities' relevant policies and procedures (such as codes of conduct) and other relevant information, such as "no contact orders" received. The report indicated that most of the schools were compliant or significantly compliant with the Act's requirements, and that a more in-depth review of campus practices (Phase II) for potentially non-compliant schools will begin in fall 2017.

DSP Compliance With the Act

We found that DSP met its responsibilities under the Act. In December 2015, DSP created a Campus Sexual Assault Victims Unit (Unit), which comprises 11 senior investigators located throughout the State as well as administrative and support staff. Unit staff have received specialized training

in responding to campus sexual violence and related crimes. According to DSP, the Unit's mission is to reduce the incidence of sexual assault, dating violence, domestic violence, and stalking on campuses through a prevention education campaign and a response training program. The mission also includes facilitating reporting and providing support to students, faculty, staff, university police, campus safety, local law enforcement, and victim advocates. Specifically, in fulfillment of its obligations under the Act, the Unit has:

- Trained its staff in responding to campus sexual violence and related crimes;
- Given nearly 100 training events to campus communities;
- Held four regional trainings and a five-day seminar with 898 total registrants, focusing on sexual assault investigations, and including coverage of topics such as social media, violence, and understanding the nature of victimization;
- Responded to and/or assisted with handling 131 cases of sexual assault, dating violence, domestic violence, or stalking at institutions or involving college students during the period April 5, 2015 to July 25, 2017; and
- Created a hotline in February 2015, prior to the Act taking effect, that is dedicated to reporting sexual violence on college campuses.

Recommendation

To SED:

1. As soon as is practicable:

- Collect aggregate incident data from covered institutions; and
- Using the data acquired, issue a report on sexual assault incident data to the Governor and Legislature and publish statistics.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if SED and DSP are complying with the requirements of the Enough is Enough Act. The audit covers the period July 7, 2015 to September 26, 2017.

To accomplish our objective and assess each agency's internal controls relating to our objective, we reviewed relevant laws and regulations. We reviewed the MOU related to the responsibility to conduct institutional audits, and contacted relevant officials from parties to that agreement, including SED, DSP, OCS, and OVS. We reviewed DSP's training documentation, annual reports, and a list of cases DSP assisted with or investigated for the period April 1, 2015 through July 31, 2017. We also met with personnel from both SED and DSP to better understand their roles in implementing Act requirements. Additionally, we reviewed an OCS report on its preliminary findings from a review of Act compliance at colleges and universities. We did not verify the findings of the review.

We conducted our performance audit in accordance with generally accepted government auditing

standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to SED and DSP officials for their review and formal written comment. We considered their comments in preparing this final report and have included them in their entirety at the end of the report. Although SED disagrees with some of our conclusions regarding the Act's required implementation dates, it plans to implement our recommendation. DSP agreed with our conclusions regarding its role in complying with the Act.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the State Education Department shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendation contained herein, and if the recommendation was not implemented, the reasons why.

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews, and evaluations of New York State and New York City taxpayer-financed programs.

Agency Comments - State Education Department



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY
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December 6, 2017

Stephen Goss
Audit Director
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Division of State Government Accountability
110 State Street - 11th Floor
Albany, NY 12236-0001

Dear Mr. Goss:

The following is the New York State Education Department's (Department) response to the draft Office of the State Comptroller (OSC) audit report, 2017-S-38: Compliance with the Enough is Enough Act.

Recommendation: As soon as is practicable

- Collect aggregate incident data from covered institutions; and
- Using the data acquired, issue a report on sexual assault incident data to the Governor and Legislature and publish statistics.

Department's Response: While the Department disagrees with OSC's interpretation of the deadline by which the Department was required to issue regulations relating to the reporting of data on annual incidents, and the deadline by which the Department must report such aggregate data to the Governor and Legislature, the Department will comply with the OSC's recommendation.

The Enough is Enough statute (Chapter 76 of the Laws of 2015) was enacted on July 7, 2015. Shortly after the statute was enacted, the higher education sectors advised the Department that several elements of the statute, including the reporting categories, which are different from those required under the Federal Clery Act, were confusing, undefined, and in need of further clarification before regulations could be issued. Over several months, the Department, working with the NYS Office for Campus Safety, developed a guidance document

which was posted on the Department's website on June 2, 2016 in order to provide clarity to the field on the requirements of the new law.

As required by the new law, the Department then consulted with the higher education sectors concerning the data reporting regulations and the Department presented proposed regulations to the Board of Regents at its May 2017 meeting and following the 45-day public comment period required under the State Administrative Procedure Act, adopted the regulations at their July 2017 meeting, thereby meeting the statutory deadline for issuance of the regulations.

During the required consultation with the higher education sectors, the sectors agreed that the Enough is Enough reporting schedule should align with the reporting schedule already required under the Clery Act (which requires institutions to report in October based on the prior calendar year data). As a result, the regulations require institutions to report the required data concerning incidents of sexual assault, dating violence, domestic violence and stalking for the prior calendar year on or before October 1, 2019 and each October thereafter.

In order to meet the needs of the field, while at the same time meeting the statutory deadline for a report to be issued by July 2018, the Department will require institutions to submit interim aggregate data to the Department in May 2018 (for the period January 1-April 30). The Department will then submit an interim report to the Governor and Legislature by July 2018 based on the data received. After all the required data has been submitted to the Department for calendar year 2018, the Department will then submit the final report to the Governor and Legislature as required by statute. The Department believes the collection of interim data and the submission of an interim report regarding that data will address OCS's recommendation.

Yours truly,



Sharon Cates-Williams
Deputy Commissioner

cc: Beth Berlin
Jhone Ebert
John D'Agati
Leslie Templeman

Agency Comments - Division of State Police



November 24, 2017

The Honorable Thomas P. DiNapoli
New York State Comptroller
110 State Street
Albany, New York 12236

Dear Comptroller DiNapoli:

On behalf of the Division of State Police, thank you for your report regarding our Campus Sexual Assault Victims Unit's (CSAVU) compliance with the Enough is Enough act. Our agency commends you and your audit team for the thorough and professional review, and the valuable feedback that has been provided.

We are pleased that the New York State Police Campus Sexual Assault Victims Unit is in compliance with the legislation. The Division of State Police and our CSAVU team are committed to ending sexual violence on college campuses in New York State. The Enough is Enough legislation has given us the guidance toward that endeavor. Our agency will remain diligent in our mission to reduce the incidence of sexual violence and facilitate the reporting of sexual assault, dating and domestic violence, and stalking through our CSAVU's prevention education program and the unit's training and response to sexual violence reports. The New York State Police will also continue to provide investigative support to our campus and local law enforcement agencies.

CSAVU has conducted more than 350 educational presentations at campuses across New York, and assisted with over 145 sexual assault cases, resulting in 28 arrests.

Their efforts would not be possible without state agency partners like the Office of the State Comptroller. Thank you for your attention to vital initiatives such as the Enough is Enough legislation and the mission of the Division of State Police. Your oversight and input is imperative in helping us to succeed in our efforts.

The New York State Police Campus Sexual Assault Victims Unit will continue to work toward making a difference in the fight against sexual assault.

With kind regards,
Lieutenant Colonel Steven G. James
New York State Police – Professional Standards Bureau
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