

“Yes Means Yes”: The Modern Movement for Colleges and Universities to Adopt Affirmative Consent as a Way to Mitigate the Risk of Sexual Assault on Campus

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**Over 13 percent of women in college have reported being a
victim of stalking during the school year,
and one out of every five college women has reported being
sexually assaulted. It is simple to talk about statistics.
It is more difficult to remember that each number is a victim
and represents a daughter, a sister or a friend.**

**—GWEN MOORE,
WISCONSIN CONGRESSWOMAN**

“Yes Means Yes”[®]: The Modern Movement for Colleges and Universities to Adopt Affirmative Consent as a Way to Mitigate the Risk of Sexual Assault on Campus

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Introduction

The issue of how to fix what many perceive as a crisis in the number of sexual assaults on college campuses has made its way into the mainstream, and the topic has gained significant public exposure. For example, one major media outlet recently showed in primetime *The Hunting Ground*, a controversial documentary about college sexual assaults, and the film’s theme song just won an Oscar after being introduced by Vice President Biden and performed by pop star Lady Gaga at the Academy Awards. The federal government, as well, has inserted itself into the conversation. Recently, President Barack Obama mounted the “It’s On Us” campaign to combat sexual assaults, and a bipartisan group in Congress introduced federal legislation called the Campus Accountability and Safety Act (CASA), which, if passed, would establish new requirements and penalties for colleges and universities dealing with sexual assaults.

Public discourse on sexual assaults began significantly trending several years ago when the Office of Civil Rights issued its 2011 Dear Colleague Letter interpreting colleges and universities’ Title IX obligations in the sexual assault context. At the time, attention seemed to center mostly on how colleges and universities should respond after a sexual assault happens. But increasingly, public discourse has shifted its focus to changing the fundamental culture of sex on college campuses as a way to prevent sexual assaults. Importantly, the affirmative consent movement has gained significant traction as the catalyst to achieve such cultural change. This movement calls for colleges and universities to adopt policies where students must not just refrain from sexual activity when it has been refused; they must obtain knowing, voluntary, and conscious agreement in order for sexual activ-

ity to be consensual, and not assault. A few states have already passed legislation that actually requires colleges and universities to incorporate affirmative consent into their student conduct policies. Additionally, a significant number of colleges and universities have on their own amended their sexual assault policies to define consent in the affirmative, i.e. as an unequivocal “yes,” rather than the absence of a “no.” In the face of what appears to be a shift in what constitutes consent for sex at institutions of higher learning, colleges and universities are well advised to become familiar with the concept of affirmative consent and to assess whether it makes sense for their institutions to adopt affirmative consent policies to help mitigate the risk of sexual assaults on campus.

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Sexual Assault Statistics

Statistics concerning the incidents of sexual assaults on college campuses vary. The numbers are skewed depending on sample size, methodology, and the definition of sexual assault used to conduct the study. With that said, according to many publicized studies on the topic, the incidents of sexual assaults on college campuses are alarmingly high.

According to the U.S. Department of Justice, rape is the most common violent crime at college campuses in the United States.¹ It is estimated that between 20 to 25 percent of college women are the victim of a completed or attempted sexual assault during their college careers.² According to one study, 1 in 5 women (or 20 percent) and 1 in 16 men (or 6.25 percent) are sexually assaulted while in college.³ Other sources claim that the number of college women that will be victims of sexual assault during college is as high as 1 in 4 (25 percent).⁴

One study concluded that sexual assaults are most likely to occur in September, October, and November, on

Friday or Saturday nights, and between the hours of midnight and 6:00 a.m.⁵ According to another source, college women are most likely to be a victim of a sexual assault during the early weeks of their freshman and sophomore years of college.⁶ Most sexual assaults also tend to be perpetrated by an acquaintance, as opposed to being committed by a complete stranger. It is estimated that 9 of 10 women who are victims of sexual assault knew the person who committed the alleged assault.⁷

Notably, the majority of sexual assaults on college campuses go unreported, according to statistics. Indeed, by some estimates, more than 90 percent of sexual assault victims on college campuses do not officially report the assault.⁸ Interestingly, statistics reflect that two-thirds of the time victims tell someone of the sexual assault, usually a friend, family member, or school official, but fewer than 5 percent of rapes of college women are reported to law enforcement.⁹

Now many claim that these sexual assault statistics are exaggerated, over simplified, and/or misleading.¹⁰ But even if that is the case, the widespread publication of sexual assault statistics has turned the focus on campus sexual assault. Furthermore, the pervasive dissemination of these statistics has sparked widespread outcry by a diverse cross section of society that there exists an urgent need to address what is at least a perceived problem of sexual assaults on college campuses. In response, a movement has developed to try to prevent sexual assaults on campus by actually shifting college students' fundamental views about sex and the accepted norms of sexual behavior on college campuses. As Vice President Biden put it at the Academy Awards, many now believe now that combatting the problem of sexual assaults on campus requires that, "We must and we can change the culture."¹¹

What Is Affirmative Consent?

Affirmative consent, in the sexual assault context, can be generally defined as a knowing, voluntary, and conscious

agreement by all participants to engage in sexual activity.¹² In essence, affirmative consent requires that all participants receive a "yes" from the other participant(s) before continuing with any sexual activity.¹³ Generally, affirmative consent is given by actually stating in words an affirmative desire to engage in sexual activity. Under most definitions, affirmative consent can also be given through actions or conduct. Either way, the critical point of affirmative consent is that silence or the absence of a rejection is not enough to define a sexual encounter as consensual. Whether the method of consent is word or conduct, there must be "clear permission regarding the willingness to engage in the sexual activity" if the sexual activity is to be deemed consensual.¹⁴ If affirmative consent is not obtained, then the encounter may constitute a sexual assault.

This definition of affirmative consent constitutes a shift in the very concept of consent for sex. Historically, an affirmative declaration of a willingness to engage in sexual activity has not been required for sex to be consensual. A person has been presumed to have agreed (i.e. consented) to sex so long as there was no expressed refusal for sexual activity. For example, criminal statutes and college sexual assault policies often have defined sexual assault as involving the use of force or the threat of force for sex or as sexual activity which occurs after a person implicitly or expressly rejects sexual contact. Either way, in order to meet the definition of sexual assault, one must somehow have expressed that he

or she does not wish to engage in a particular activity or otherwise lacks the ability to give consent for the sexual activity, by virtue of intoxication, for example.

In this way, consent in the context of sexual assault has long been defined in the negative. Indeed, the phrase "no means no" has long been used to explain this paradigm of sexual consent and to educate individuals about how to avoid sexual assault on college campuses and elsewhere.¹⁵ The recent movement to define consent for sex in the affirmative, by contrast, requires an actual, knowing as-

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sersion that one wishes to engage in sexual activity, rather than simply permitting sex in the absence of a rejection. In short, the concept of affirmative consent transforms traditional views of consent from “no means no” to “yes means yes.”¹⁶

Proponents of affirmative consent believe that sexual assaults at institutions of higher learning can be stopped by ingraining in college students the idea that appropriate sexual behavior requires them to do more than avoid sexual intercourse when someone has said no; it requires them to obtain unequivocal, voluntary affirmation for sex from all participants and for all sexual acts. By redefining consensual sex, the affirmative consent movement therefore seeks to alter the very consciousness of college students about sexual relationships and change how they think about consent and, in turn, sexual assaults.

The Shifting Paradigm to Affirmative Consent

Importantly, requiring affirmative consent for sex, i.e. shifting to a “yes means yes” standard for consent, is gaining significant momentum as an effective way to shift cultural norms about sex on college campuses and prevent sexual assaults. State legislators and institutions of higher learning alike seem to be more and more accepting that affirmative consent may well provide a resolution to the issue of sexual assaults on campus.

State Legislation Requiring Colleges to Define Consent in the Affirmative

Two states have already passed legislation requiring colleges and universities to define consent for sex in the affirmative. California became the first state to do so, in 2014. Then, in 2015, New York passed a similar law.

The California law defines “affirmative consent” as “affirmative, conscious, and voluntary agreement to engage in sexual activity.”¹⁷ In contrast to historical definitions of consent, the law explicitly states that “lack of protest or resistance does not mean consent, nor does silence mean consent.”¹⁸ According to California law, consent to one sexual act also does not automatically constitute consent for another act. Instead, affirmative consent must be ongoing throughout a sexual encounter. That is, there must be conscious, voluntary agreement for each and every sexual act during a sexual encounter.¹⁹ The law also provides that consent can be revoked at any time.²⁰

Furthermore, it specifically contemplates affirmative consent under circumstances when people are dating or have had sex in the past. The law states, “The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.”²¹ California’s legislation also places the onus of obtaining affirmative consent on everyone engaged in a sexual encounter. As a result, each and every person engaging in sexual activity must obtain affirmative consent from all other participants in order for the sex to be consensual at colleges subject to the California law.²² Importantly, the penalty for institutions who fail to adopt policies which comply with the law is significant. Colleges who fail to adopt the concept of affirmative consent and define it in a way which complies with the state’s definition of affirmative consent face the risk of losing state funds for student financial assistance.²³

Last year, New York passed affirmative consent legislation similar to California’s. The New York law defines “affirmative consent” as “a knowing, voluntary, and mutual decision among all participants to engage in sexual activity.”²⁴ The law allows for consent to be given by words or action so long as clear permission to engage in sexual activity is given.²⁵ And like California, the New York law also expressly provides that silence or lack of resistance is not enough to demonstrate consent for sex.²⁶ As in California, the affirmative consent law in New York requires knowing, voluntary consent for each and every activity of a sexual encounter, and prior consensual sexual activity does not automatically equate to consent for future sexual activity.²⁷ The statute provides that “consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.”²⁸ The New York law also expressly addresses that “consent cannot be given when a person is incapacitated.”²⁹ Incapacitation occurs, according to the law, when an individual “lacks the ability to knowingly choose to participate in sexual activity,” such as when he or she is asleep, is involuntarily restrained, or is so intoxicated by virtue of being under the influence of alcohol, drugs, or other intoxicant, such that the person is unable to consent.³⁰ The New York law also explicitly provides that consent must be obtained even when participants have been drinking or taking drugs, and it further provides

for that consent may be withdrawn at any time.³¹ Colleges and universities subject to the law face unannounced compliance audits under the recently passed legislation.³² In New York, colleges and universities also must file a certificate confirming that they have adopted an affirmative consent definition in compliance with the law.³³ Similar to California, a college or university in New York who fails to timely file such a certificate of compliance risks losing its state funding.³⁴

Importantly, New York and California are unlikely to be the only states where colleges and universities will be forced to adopt policies requiring affirmative consent for sexual activity. Several other states, including New Jersey, New Hampshire, and Connecticut, have introduced bills that would require colleges and universities operating in the states to define consent in the affirmative if they wish to continue to receive state funding.³⁵

College Sexual Assault Policies Incorporating Affirmative Consent

Considering this trend in legislation, it is not surprising that the affirmative consent concept has made its way to colleges and universities. Many colleges and universities have already adopted policies that incorporate the concept of affirmative consent. Indeed, the shift to define consensual sex not as a lack of rejection for sex, but rather a knowing, voluntary expression of agreement for sex, is happening rapidly in higher education institutions.

The State University of New York (SUNY) adopted and published its revised sexual assault policy defining affirmative consent exactly as defined in New York's recent legislation.³⁶ SUNY is not the only institution to do so. In 2014, the National Center for Higher Education Risk Management (NCHERM) estimated that more than 800 colleges and universities used some type of affirmative consent definition in their sexual assault policies.³⁷ Just one year later, NCHERM estimated that the sexual assault policies of 1,400 institutions of higher learning used some type of affirmative consent definition.³⁸ If these estimates are accurate, the number of institutions requiring affirmative consent in sexual encounters nearly doubled in just one year.³⁹ If this trend continues, it is not difficult to imagine that at some point soon, affirmative consent, i.e. "yes means yes," will replace the rejection for sex, i.e. "no means no," as the prevailing standard for consent and for

determining if a sexual assault has occurred in the university setting.

Criticisms of Affirmative Consent

While the affirmative consent campaign is strong and rapidly growing, it certainly is not without its critics. Many stridently disagree with redefining consent in the affirmative in the sexual assault context. Below are certain themes commonly presented in opposition to requiring affirmative consent for sex on college campuses.

It Is Unnatural and Kills the Mood

Dissenters claim that the concept of affirmative consent ignores conventional sexual behavior. They argue that it is unnatural for individuals engaged in a sexual encounter to ask for and/or give explicit, verbal confirmation that they wish to engage in every sexual activity that occurs. Critics say that to ignore this reality and label as a sexual assault any sexual activity which lacks an actual, affirmative expression of consent turns people who otherwise would be considered to have engaged in consensual sex into "unwitting rapists every time they have sex without obtaining an explicit 'yes.'"⁴⁰ Some critics also claim that it is awkward and "kills the mood" to have to continuously seek permission for each and every sexual act as part of a sexual encounter.⁴¹

Advocates of affirmative consent rebut these claims on the grounds that preventing unwanted sexual activity outweighs the risk of any embarrassment that might come from obtaining affirmative consent.⁴² Notably, the prevalence of social media in the everyday lives of college-aged students may mitigate this particular concern by embedding the concept of affirmative consent, i.e. "yes means yes," into college students' lives.

Interestingly, there are "apps" already available intended to "teach young people 'the language of affirmative consent'" and to combat the perceived prevalence of sexual assaults on college campuses.⁴³ For example, Good2Go is a "smartphone application that encourages users to give consent before engaging in any sexual acts."⁴⁴ The app launches a pre-set series of questions that are intended to ensure all parties are willing and able to consent to sexual activity.⁴⁵ When a user logs in, the application initiates the affirmative consent discussion by asking "Are we Good2Go?"⁴⁶ If the person responds in the negative, a

screen appears on the initiating party's screen informing him or her of the lack of consent and reminding the person that affirmative consent is the ONLY circumstance in which sexual activity is appropriate.⁴⁷ The Good2Go app also contemplates the problem of intoxication. Once a person answers that he or she wishes to engage in sexual activity, the app prompts the responder to characterize his or her level of intoxication. If the responder indicates that he or she is of a certain level of intoxication, the app sends a message to the initiating party that the other person is unable to give consent notwithstanding his or her initial affirmative response.⁴⁸

As college students more and more manage their social (and sexual) lives through mobile devices and social media, it is not difficult to imagine that these types of apps may make it acceptable and perhaps even normal for college students to seek affirmative consent for sexual activity. Importantly, because these apps create an actual record of consent, in theory they protect not only potential victims, but also those concerned about false accusations of sexual assault. With that said, users must understand that consent can be withdrawn at any time, including after agreeing to sex through an affirmative consent app.

It Unfairly Applies Higher Expectations to the Sexual Behavior of College Students

Another common criticism for affirmative consent is that current legislation and college policies that require it apply only to college students. Critics argue that this creates a higher standard for college attendees than for those not living in a university setting.⁴⁹ The theory seems to be that having different expectations for sexual behavior ignores that the conduct which does or does not constitute sexual assault should be universal and should not change depending on the setting.⁵⁰ In other words, if certain conduct is so egregious that it transforms a sexual encounter into an assault, the conduct should be disavowed in any setting, not just college.

Defenders of affirmative consent respond that having a different standard in the college setting makes sense because different burdens of proof and different penalties apply. That is, when a 21-year-old is accused of sexual assault outside the college setting, criminal statutes call for a beyond a reasonable doubt standard. Furthermore, outside of a university, one accused of sexual assault faces jail time and the loss of freedom. In a college setting, by contrast, the more relaxed preponderance of the evidence/more likely than not standard is utilized to adjudicate student sexual assaults, and the punishment generally restricts access to higher education.⁵¹ While certainly dire for those who face it, having restricted access to a college degree is not equivalent to going to jail. In that way, there arguably exists a rational basis for utilizing a different standard of consent for college students. Furthermore, while the legal relationship arguably has evolved beyond *in loco parentis*, the fact that colleges historically have held some kind of special relationship with their students also may justify applying a heightened standard of consent in the campus setting.⁵²

While the legal relationship arguably has evolved beyond *in loco parentis*, the fact that colleges historically have held some kind of special relationship with their students may justify applying a heightened standard of consent in the campus setting.

It Erodes the Rights of the Accused

Critics of affirmative consent have concerns that requiring affirmative consent for sex will make it easier for people to accuse others of sexual assault and will artificially increase the number of sexual encounters on college campuses that meet the definition of sexual assault.⁵³ These critics also argue that affirmative consent makes it more difficult for those accused of sexual assault to defend themselves. They claim that the use of affirmative consent shifts the burden of proof to the student accused of sexual assault.⁵⁴ They also opine that the wording used to define affirmative consent is vague, ambiguous, and lacking in clarity, which makes it more difficult for colleges and universities to adjudicate sexual assault cases.⁵⁵ In essence, they claim that it is more difficult to ascertain whether there has been

an affirmative “yes” given to sex than it is to determine whether sex has been rejected with a verbal or non-verbal “no” under the traditional “no means no” theory for sexual assault.⁵⁶ In all of these ways, critics fear that the due process rights of those accused of sexual assault will be eroded even further than some perceive they already have been under traditional definitions of consent.

This argument seems to ignore that policies defining sexual assault as an absence of consent already use vague and imprecise terms. It also discounts that sexual assault is by nature a gray area embedded with ambiguity and innuendo. In that way, no matter how consent is defined, colleges and universities face the difficult task of assessing whether a sexual assault has or has not occurred based on the particularized facts and circumstances of each and every case. In other words, whether consent is defined in the affirmative or as an absence of consent, to determine if a sexual encounter is converted to a sexual assault college disciplinary boards also have to interpret nonverbal cues to decide whether consent has or has not been given. They also have to assess subjective human behavior to evaluate whether there has been an instance of sexual assault. Indeed, colleges and universities which currently define sexual assault in terms of the use of force/sex after refusal already perform these very analyses to determine whether a sexual assault has or has not occurred. If affirmative consent becomes the standard, they will continue to do so, by evaluating whether students’ conduct during a sexual encounter constitutes a knowing, voluntary agreement for sex, instead of whether it constitutes a rejection of sex. In fact, requiring unequivocal word or action to indicate mutual agreement for sexual activity through affirmative consent, at least in theory, serves to eliminate some of the subjectivity in identifying a sexual assault. In that way, affirmative consent may well reduce the ambiguity latent in consent concepts for both students and college disciplinary boards facing sexual assault accusations. Furthermore, defining consent affirmatively need not change the burden of proof, but only

the method of proof. Institutions may continue to require the accused to prove the sexual assault by presenting facts which establish that he or she never said “yes” as opposed to establishing that he or she said “no.”

Importantly, all of these criticisms ignore that the principal objective of the affirmative consent movement is not to make the student disciplinary process less complicated. It is not to define sexual assault in a way that comports with traditional views of sexual behavior or that avoids uncomfortable interactions between sexual partners. It is not to protect the rights of the accused. The primary goal of the movement is to prevent sexual assaults by shifting the very nature of sex on college campuses. With that said, the criticisms of affirmative consent are certainly valid and should not be discounted. Therefore, to the extent colleges and universities consider changing their sexual assault policies to define consent in the affirmative, they should try to draft the policies which seek to tackle these common criticisms.

Requiring unequivocal word or action to indicate mutual agreement for sexual activity through affirmative consent, at least in theory, serves to eliminate some of the subjectivity in identifying a sexual assault.

Guidance to Adopting Affirmative Consent

In light of the growing trend for colleges and universities to adopt affirmative consent definitions as part of their student conduct policies, higher education institutions are well advised to review how they define the concept of consent and whether it makes sense to redefine it in the affirmative as part of an anti-sexual assault agenda. It is important to remember that the precise definition of consent in any student conduct policy will differ for each institution, depending on its specific sexual assault risk assessment and the law of the state in which the institution operates, as well as the individualized educational, philosophical, and social missions of the institution. With that said, the following list is intended to provide some general guidance to help colleges and universities decide whether and how to define affirmative consent as a way to manage the risk of sexual assault on campus:

- Define affirmative consent in a manner consistent with the law of the state in which the institution

operates, especially if that state has passed legislation requiring affirmative consent.

- Carefully consider and address the rights of the accused.
- Use a gender neutral definition of affirmative consent, and require all participants to obtain affirmative consent. This way, no matter the gender of the participants, all participants in a sexual encounter have an obligation to achieve mutual agreement for any sexual activity to avoid an accusation of sexual assault.
- Assess whether to explicitly discuss the impact of alcohol, drugs, or other intoxicants and incapacitation.
- Analyze how to incorporate a dating relationship and/or prior instances of consensual sex between partners.
- Incorporate the ability of a participant to withdraw consent at any time.
- Evaluate whether to include language that discourages reliance on nonverbal communication in sexual encounters and emphasizes that an actual verbal “yes” to sexual activity is required, or whether to omit this type of language because it may be too permissive in converting consensual sexual encounters to assaults.⁵⁷
- Continue to include language that addresses the use of force, coercion, intimidation, or threat of harm. Just because it does not constitute the only example of a sexual assault in a policy using affirmative consent does not mean that a sexual encounter involving force should not be explicitly addressed.
- Address the need for continuing consent, i.e. should the policy specify one way or the other whether consent for each separate and distinct sexual act that occurs during an encounter is required.
- Train college personnel to understand the institution’s definition of consent so that whether they are adjudicating a complaint or dealing with a report in another context, they recognize a potential sexual assault. This will be particularly important if a college is changing its policy to require affirmative consent rather than a rejection in the sexual

assault context, i.e. it is shifting from consent defined as “no means no” to “yes means yes.”

- Educate ALL students, preferably starting early on in the academic year, about the concept of affirmative consent, or any other definition of consent that the institution adopts. This is especially important because many students may be prone to operate under the “no means no” concept that has been ingrained in our culture unless and until they are informed that this is not the standard.
- Assess whether certain populations thought to be at higher risk, i.e. freshmen and sophomores or newly matriculating students, should receive more training and education.
- Be prepared to enforce the definition of consent used in any sexual assault policy that the institution adopts.
- Continue to follow Title IX obligations any time a sexual assault report is launched, such as, for example, adopting grievance procedures which provide prompt and fair resolution of sexual assault (and other sex discrimination) complaints; adopting policies where conflicts of interest are disclosed; establishing equitable processes for all parties, i.e. if the respondent has the right to question witnesses, have a lawyer, or review statements, so must the complainant; providing notice of grievance procedures; adjudicating the complaint on the preponderance of the evidence standard; providing written notice of the outcome, etc.⁵⁸
- Incorporate the mission, goals, and resources of the college or university in deciding whether or not to define consent in the affirmative in its sexual assault policies.
- Define consent in a way that best serves the students, staff, and administrators and considers the actual and desired campus culture.
- Seek advice of general counsel, outside counsel, and/or risk managers as necessary to adopt a fair and equitable definition of consent consistent with the institution’s objectives and mission and the applicable law.

Conclusion

The concept of how to address and prevent sexual assault on college campuses is swiftly evolving. Whether accurate or not, the popular perception is that sexual assaults on college campuses are unacceptably prevalent. Outrage has grown significantly in recent years in part because of widely publicized data on college sexual assaults. The federal government and many states have taken on the cause, passing or attempting to pass legislation addressing sexual assaults on campus. While many institutions of higher learning might appropriately argue that campus sexual assaults are not as prolific as publicized and/or that the government is not the proper agent to regulate the issue, they should also be aware that there is momentum to fundamentally change the sexual behavior of college students by redefining consensual sex as affirmative agreement for sex, rather than merely an absence thereof.

As discussed above, more and more states are passing legislation to require colleges to adopt affirmative consent for sexual activity, and a growing number of colleges and universities are voluntarily adopting affirmative consent language in their sexual assault policies. As this happens more and more, it creates at least the perception, if not the reality, that “yes means yes” is the new and prevailing standard that colleges should apply in the sexual assault arena. Prospective students and parents alike may well expect that their college of choice has adopted a strong sexual assault policy that includes affirmative consent. Indeed, if the trend to pass legislation in this regard continues, it may well be the law. In this environment, colleges and universities should review the definition of sex used in their sexual assault policies and carefully consider whether adopting affirmative consent should be among the methods it uses to manage the risk of sexual assaults on campus.

About the Author



Allison C. Ayer is a founding partner of Vrontas, Ayer & Chandler, P.C. Her practice concentrates on providing legal advice and counseling to businesses and other organizational entities, including colleges and universities, about how to prepare institutional policies and comply with applicable law. Allison has significant experience defending clients in state and federal court, and she has defended numerous discrimination and sexual harassment claims at both administrative agencies and in court, including those for sexual assault. Allison also assists her clients with developing and implementing internal policies and procedures to help prevent litigation. She has reviewed and drafted handbooks and policy manuals, and she has performed sensitivity and other legal training to employers and educational institutions in the region. Allison also has successfully defended colleges and universities in cases involving claims of negligent hiring and retention, invasion of privacy, false arrest, federal civil rights violations, sexual abuse, disability discrimination, and personal injury matters.

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¹⁵ Jake New, “Colleges Across Country Adopting Affirmative Consent Sexual Assault Policies,” *Inside Higher Ed* (October 17, 2014), <https://www.insiderhighered.com/news/2014/10/17/colleges-across-country-adopting-affirmative-consent-sexual-assault-policies>.

¹⁶ Affirmative Consent, “What is Affirmative Consent?”

¹⁷ California Education Code §67386(a)(1).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ New York State Senate Bill S5965, Article 129-B §6441(1), <https://www.nysenate.gov/legislation/bills/2015/s5965>.

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²⁵ New York State Senate Bill S5965, Article 129-B §6441(1).

²⁶ *Ibid.*

²⁷ New York State Senate Bill S5965, Article 129-B §6441(2)(A).

²⁸ *Ibid.*

²⁹ New York State Senate Bill S5965, Article 129-B §6441(2)(D).

³⁰ *Ibid.*

³¹ New York State Senate Bill S5965, Article 129-B §6441(2)(B) & (C).

³² New York State Senate Bill S5965, Article 129-B §6440(3).

³³ New York State Senate Bill S5965, Article 129-B §6440(1)(B).

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³⁵ New, “Colleges Across Country Adopting Affirmative Consent.”

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⁴⁰ Cathy Young, “Opinion Feminism - Campus Rape: The Problem with ‘Yes Means Yes’,” *Time* (August 29, 2014), <http://time.com/3222176/campus-rape-the-problem-with-yes-means-yes/>.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Alana Vagianos, “Good2Go Is an App for Consenting to Sex,” *The Huffington Post* (June 25, 2014), http://www.huffingtonpost.com/2014/09/30/consensual-sex-app-good2go_n_5903036.html.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ When a person clicks, “No, thanks,” a screen appears on the other party’s phone that reads, “Remember! No means No! Only Yes means Yes BUT can be changed to NO at any time!” See Vagianos, “Good2Go.”

⁴⁸ *Ibid.*

⁴⁹ Diamond Naga Siu, “Consent Law Wording Confuses,” *Washington Square News* (November 9, 2015), <http://www.nyunews.com/2015/11/09/consent-law-wording-confuses/>.

⁵⁰ *Ibid.*

⁵¹ New, “Colleges Across Country Adopting Affirmative Consent.”

⁵² Philip Lee, “The Curious Life of In Loco Parentis at American Universities,” *Higher Education in Review* (2011), http://scholar.harvard.edu/files/philip_lee/files/vol8lee.pdf; see also Nick Sweeton and Jeremy Davis, “The Evolution of In Loco Parentis,” http://www.sahe.colostate.edu/data/sites/11/documents/journal/journal2003_2004vol13/loco_parentis.pdf.

⁵³ Siu, “Consent Law Wording Confuses.”

⁵⁴ *Ibid.*

⁵⁵ Young, “Opinion Feminism - Campus Rape.”

⁵⁶ *Ibid.*

⁵⁷ *Ibid.* (Noting that many colleges and universities with affirmative consent sexual assault policies, such as Occidental College, Duke University of Houston, and Swarthmore, have incorporated such language).

⁵⁸ United States Department of Education, Office of Civil Rights, “Dear Colleague Letter” (April 4, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.



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