Affirmative Consent Policy

Resolved that the Senate shall ask the University President to ask the CSCU Board of Regents (or its appropriate body) to add the following language (in red) to its Sexual Misconduct, Sexual Assault and Intimate Partner Violence Policy in the Student Code of Conduct section, page 5, final paragraph (in black).

An affirmative consent standard exists at CSCU in the determination of whether consent was given by all parties to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity.

Consent is the equal approval, given freely, willingly, and knowingly of each participant to desired sexual involvement. Consent is an affirmative, conscious decision – indicated clearly by words or actions – to engage in mutually accepted sexual contact. Consent cannot be assumed because there is no physical resistance or other negative response. A person who initially consents to sexual activity shall be deemed not to have consented to any such activity which occurs after that consent is withdrawn. A lack of consent may result from mental incapacity (e.g., ingestion of alcohol or drugs which significantly impair awareness or judgment) or physical incapacity (e.g., the person is unconscious or otherwise unable to communicate consent).

Affirmative consent can be revoked at any time. 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.

Respectfully submitted by Senator Jeff Schlicht, Department of Health Promotion and Exercise Sciences

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Background

Yes Means Yes.

Recently in California the state legislature passed a new law requiring colleges and universities to add language to their student codes of conduct that clarify sexual consent. The old standard placed the onus on one party to say “No” if she or he did not want to engage. The new standard requires “affirmative consent” by both parties, which is defined as “affirmative, conscious, and voluntary agreement to engage in sexual activity.” (1)
This change is part of a nation-wide emphasis on campus sexual violence sparked by the publication of a report by the White House in April 2014 titled “Not Alone” (2) that pushed the issue of sexual violence to the forefront of all post-secondary institutions’ agendas. Like California, the federal government is tying access to financial aid money directly to work done on better understanding, reporting, and dealing with campus sexual assault.

One reason California adopted an affirmative consent standard is because cases of sexual assault may devolve into “he said, she said,” “he said, he said,” or “she said, she said” affairs. Requiring both parties to give affirmative consent should eliminate some of this confusion. However, there is another potential effect of this change that has far-reaching implications, which is that requiring both parties to give consent will change the social norm of discussing human sexuality.

In the United States talking about sex in a meaningful way remains taboo. Sex education programs in some primary schools are sorely lacking, and in most schools could be strengthened. Partly due to this lack of education, more than 600,000 teens get pregnant each year, about 30% of the population. (3) Teen-age pregnancies have many socially undesirable outcomes, including abortion and the need for extensive public assistance.

Requiring all young adults to talk about sex on some level before engaging in it may result in changing our social norms surrounding “sex talk.” Consequently, as these young adults become parents they may become more comfortable with the idea of having their children learn about human sexuality in school, and may even become advocates for childhood sex education.

Another potential benefit of “Yes Means Yes” is that it empowers females to recognize their sexual desires. Currently for heterosexual couples, particularly with young adults, the male is usually the de facto pursuer. He is the one expected to solicit sex while the female waits. In most sexual assault cases, the male is the perpetrator and the female is the victim. Our current social norm feeds this dynamic because it encourages male sexual aggressiveness. If adopting “Yes Means Yes” creates an environment where it is socially acceptable for women to solicit sex, and men are no longer expected to be the sole instigators of most sexual liaisons, this may result in fewer cases of sexual assault.

“Yes Means Yes” may also help neutralize words like “slut” and “ho,” derogatory terms usually aimed at females. If all women have to consciously agree to sex, then female sexual desire becomes “normal,” thus less powerful as a tool to shame people.

Human sexual desire is normal and healthy. “Yes Means Yes” allows us to embrace that part of our humanity without stigma. As a colleague recently said, “If you can’t talk about sex, you shouldn’t be doing it.” Asking all parties to become active rather than passive participants and expecting them to communicate openly about sex should have long-term, beneficial consequences for our society.

References

2) Found at http://www.whitehouse.gov/sites/default/files/docs/report_0.pdf 10/4/14