

May 2017

California's "Yes Means Yes" Standard: A Starting Point for College Sexual Assault Policy Reform

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Elizabeth Youngberg, *California's "Yes Means Yes" Standard: A Starting Point for College Sexual Assault Policy Reform*, 47 Golden Gate U. L. Rev. 205 (2017).
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COMMENT

CALIFORNIA'S "YES MEANS YES"
STANDARD: A STARTING POINT FOR
COLLEGE SEXUAL ASSAULT
POLICY REFORM

ELIZABETH YOUNGBERG*

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INTRODUCTION

Chris: Did I really consent? I mean, I didn’t say no, but I don’t remember saying yes either. We had been at a bar and had a few drinks earlier. He just started kissing me, which I liked a lot. Then he started undressing me. I pulled his hands away from my shirt buttons once, twice, three times. Then I decided it wasn’t doing any good, and I didn’t want to offend him or make him mad. We lay down, and I just laid there. It didn’t hurt, and it wasn’t exactly bad, but it also wasn’t good. I don’t think I ever said yes.

Alex: We started kissing, and it was great. She kept kissing me back. Then I reached for her shirt buttons, moving to the next step. She grabbed my hands and put them on her waist once, twice, three times. I tried again, hoping she would give in and want it too, this time she didn’t move my hands. Then we lay down, she laid there until the end. It wasn’t exactly bad, but it wasn’t exactly good either.

Was there consent? Or was it an act of sexual misconduct?

This story is not unique. But this situation is preventable. There are plenty of stories between college students who have had a sexual encounter, but are not sure if they really wanted it, or did not know how to stop it when they did not want it. Not knowing whether something is consensual leaves a significant grey area in the process of colleges¹ adju-

¹ The terms “colleges” or “schools” will be used to reference public or private not for profit two or four year institutions of higher education, including any graduate programs.

dicating sexual misconduct.² The grey area is made murkier by asking colleges to adjudicate reports of sexual misconduct separate from any legal criminal prosecution – without using traditional legal standards for criminal behavior. The federal government set a series of mandates for colleges to follow in adjudicating sexual misconduct on their campuses, including reporting beyond the college to legal authorities, holding independent hearings, and using an established standard for the adjudications.³ The federal mandates provide baseline expectations, and colleges can develop their own standards beyond these mandates. The federal government standards offer a starting point for colleges as they try to independently handle what can be considered a violent crime.

These mandates offer a framework, but do not establish a uniform standard of consent pertaining to sexual misconduct. California has filled this gap with its own statute defining consent. In addition to the federal laws and guidance, the California legislature has mandated a uniform consent policy for colleges in the state.⁴ Under this law, only an affirmative yes, whether verbal or by physical action, is accepted as consent when colleges are investigating and adjudicating accusations of sexual misconduct.⁵ This law goes one step beyond the federal mandates for adjudicating sexual misconduct by explaining and defining what counts as consent when determining whether there was an act of sexual misconduct. The California law is one part of what should be a series of expectations set for colleges as they adjudicate claims of sexual misconduct on their campuses.

Section I will discuss the background on colleges and their responsibility to address sexual misconduct on their campuses. This begins with a discussion regarding the relationship colleges share with their students and the government. Next, the background will discuss the federal laws that govern colleges and how they are expected to address campus sexual misconduct, including the Clery Act, Title IX as interpreted and defined by the Dear Colleague Letter of 2011, the Campus SaVE Act, and the Violence Against Women Reauthorization Act of 2013. Finally, this section concludes by reviewing California laws addressing campus sexual

² Unless stated otherwise, for purposes of this Comment the term sexual misconduct will be used when referencing any kind of sexual misconduct, including harassment.

³ Student Right-To-Know and Campus Security Act, Pub. L. No. 101-542, 104 Stat. 2381 (1990); 20 U.S.C. § 1681; Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54; Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, *Dear Colleague Letter: Sexual misconduct*, U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS (Apr. 4, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

⁴ CAL. EDUC. CODE § 67386(a)(1) (West 2016).

⁵ *Id.*

misconduct, including the California Education Code and the California “Yes Means Yes” bill, which amended the California Education Code.

Section II explains how the federal laws operate and affect colleges, providing baseline standards for all colleges to use in their adjudicatory processes. Next, the argument will discuss how the California “Yes Means Yes” bill not only affects how colleges in California adjudicate sexual misconduct on their campuses, but also how the affirmative consent standard changes views of sex and relationships on college campuses. The discussion includes how this bill shifts the conversation on sex and rape within adjudications as well as generally for students. Finally, it will discuss additional challenges that still exist within the college sexual misconduct adjudication processes with recommendations for how to address them.

The California “Yes Means Yes” bill and the federal regulations preceding it are not perfect, but while colleges are expected to adjudicate campus sexual misconduct, often instead of the judiciary, they need stronger and more concrete guidance on how to do so. Two areas where colleges need more guidance are the protection of the accused student, and the identity and training of the parties adjudicating the claims. The California bill may not be perfect, but it sets a definition of consent for the state and is the type of guidance that should be more often offered and followed across the country.

I. BACKGROUND

A. COLLEGES’ RELATIONSHIPS WITH THEIR STUDENTS AND THE GOVERNMENT

The college-student relationship has evolved over time and there have been several ways to characterize and describe it. Colleges occupy a unique space in the United States. Legal adults make up most of this student population. However, the colleges have a significant responsibility to protect and care for these students. If these students were to join the workforce instead of go to college, their employers would not have the same responsibility or relationship as a college. This relationship between a student and the college should create a safe environment, and what students often assume is safer than the reality.⁶ However, when the safe environment is threatened, schools are placed in a position of enforcing their own set of behavioral standards and expectations.

⁶ PETER F. LAKE, *THE RIGHTS AND RESPONSIBILITIES OF THE MODERN UNIVERSITY: THE RISE OF THE FACILITATOR UNIVERSITY* 4 (2d ed. 2013).

The current relationship between students and colleges developed through several characterizations and descriptions of the responsibilities between students and colleges, starting with the *in loco parentis* model.⁷ The *in loco parentis* model can be best characterized as “the *delegation of a father’s right to discipline.*”⁸ This relationship protected the power of the college over the student, not the students themselves.⁹ The relationship evolved from the *in loco parentis* model through several iterations to the current definition of the college-student relationship,¹⁰ known as the “Duty Era in an Age of Accountability.”¹¹ In this current iteration, the college owes a duty to the student and the student has a duty to protect himself or herself.¹²

The current college-student relationship is also described as a contract.¹³ Upon entering a college, an individual agrees to abide by the rules of the institution in exchange for education and a degree. Once the contract has been established however, other areas of law seep into the relationship, including due process, civil rights, and tort law. The contract between the student and the college maintains the most basic relationship between the parties.

Colleges also have a unique relationship with the federal government. The United States Supreme Court acknowledged that college administrators are due a certain deference by state and federal governments in their decisions regarding education.¹⁴ The Court said that judges and courts should not substitute their own judgment for school administrators, and instead should allow administrators of these schools, who are the experts on the ground with the professional experience, to set educational policies.¹⁵ This deference naturally allows colleges to design the specific mechanisms to govern their students most effectively, rather than relying on a set of specific mandates from either the state or federal governments.¹⁶ Because colleges have a unique position and mission in

⁷ *Id.* at 17.

⁸ *Id.* at 19.

⁹ *Id.* at 18.

¹⁰ *Id.* at vii. The additional eras include: the 1960s, the Civil Rights Movement and the Death of Insularity; The “Bystander” University; and the Millennial Student/University Relationships. *Id.* at 3-16.

¹¹ *Id.* at 107.

¹² *Id.*

¹³ See *Zumbrun v. Univ. of S. Cal.*, 25 Cal. App. 3d 1, 10 (1972) (holding that the nature of the relationship between a private university and a student is contractual); *Kashmiri v. Regents of Univ. of Cal.*, 156 Cal. App. 4th 809, 825 (2007) (holding that the nature of the relationship between a public university and a student is contractual).

¹⁴ *Christian Legal Soc’y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 664 (2010).

¹⁵ *Id.* (citing *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206 (1982)).

¹⁶ LAKE, *supra* note 6, at 108.

American culture, courts and the law have given colleges some protection from the rules that govern other entities such as businesses or governments.¹⁷ There are, however, some areas of school governance where both the federal and state governments require schools to adopt at least general policies and handle situations in a particular manner. One such area is sexual misconduct.

B. FEDERAL LAWS REGARDING SEXUAL MISCONDUCT ON COLLEGE CAMPUSES

The federal government has enacted statutes that mandate the areas where colleges are supposed to self-regulate in the interest of creating a uniform scheme for how colleges manage their student populations. There are specific rules governing sexual misconduct on college campuses within regulations aimed towards preventing gender discrimination. The federal government implemented several statutes that speak directly to what is expected of colleges when they become aware of sex-based discrimination, specifically sexual misconduct on their campuses. These laws include the Clery Act, Title IX as interpreted through the Dear Colleague Letter of 2011, the Campus SaVE Act, and the Violence Against Women Reauthorization Act of 2013.¹⁸ Each serves a specific purpose regarding sexual misconduct and places specific expectations on colleges.

1. *The Clery Act*

The Clery Act passed in 1990 as part of the Student Right-to-Know and Campus Security Act, and governs a college's response to various forms of campus violence.¹⁹ The Clery Act amended § 1092 of the United States Code adding a series of crimes colleges are required to collect information on; and either have it available for, or report it to current students, prospective students, and the federal government.²⁰ This act explains what statistics colleges are supposed to collect and how they are supposed to report the statistics.²¹ Under the Clery Act and more

¹⁷ *Id.* (explaining that courts have the view that colleges deserve some protection from the rules that are appropriate for business and government, because they are a unique environment and have a special social mission.).

¹⁸ Student Right-To-Know and Campus Security Act, Pub. L. No. 101-542, 104 Stat. 2381 (1990); 20 U.S.C. § 1681 (2016); Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013).

¹⁹ Student Right-To-Know and Campus Security Act, Pub. L. No. 101-542, 104 Stat. 2381 (1990).

²⁰ *Id.* at § 204(f).

²¹ 20 U.S.C. § 1092(f) (2016).

recent amendments to the United States Code, colleges must collect data on criminal offenses that occur on "Clery geography," which includes buildings on the physical campus, buildings owned and controlled by the college, or buildings owned by a third party within the same area as the campus and which support institutional purposes.²² Included in the offenses schools are expected to report are: "sex offenses, forcible or nonforcible."²³

2. Title IX and the Dear Colleague Letter of 2011

Title IX of the Higher Education Amendments of 1972 is the original federal law under which colleges are expected to specifically address campus sexual misconduct.²⁴ Under Title IX, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]"²⁵ This statute has been broadly interpreted by the United States Supreme Court to include sexual misconduct under the umbrella of sex discrimination as the law applies to education.²⁶

Title IX is the umbrella federal law regarding gender discrimination, but it was specifically applied to sexual misconduct on college campuses at a later time.²⁷ In interpreting Title IX and its broad mandate against discrimination on the basis of sex, the Office of Civil Rights in the Department of Education released a Dear Colleague Letter in 2011 setting out specific mandates for how colleges are supposed to address campus sexual misconduct.²⁸ The Dear Colleague Letter²⁹ is not law or regulation, but guidance on laws or regulations enforced by the Department of Education and Office for Civil Rights. Under the Dear Colleague Letter, all schools, including colleges, were given a list of requirements for how to address sexual misconduct on their campuses.³⁰ The first requirement is that schools must respond to reports of sexual misconduct with their

²² *Id.* at § 1092(f)(6)(A).

²³ *Id.* at § 1092(f)(1)(F)(i)(II).

²⁴ *Id.* at § 1681.

²⁵ *Id.* at § 1681(a).

²⁶ *Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 75 (1992).

²⁷ LAKE, *supra* note 6, at 162.

²⁸ Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, *Dear Colleague Letter: Sexual misconduct*, U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS (Apr. 4, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

²⁹ Unless otherwise specified, Dear Colleague Letter will refer to the 2011 Dear Colleague Letter.

³⁰ Letter from Russlynn Ali, *supra* note 28.

own procedures independent of any potential criminal investigation.³¹ The Dear Colleague Letter further describes some of the procedures the federal government expects to be utilized, including notices of nondiscrimination, an employee to coordinate Title IX responsibilities, and creating and publishing a grievance procedure.³² Additionally, the grievance procedure must provide “prompt and equitable resolution of student and employee sex discrimination complaints.”³³ The Dear Colleague Letter also mandates that colleges use a preponderance of the evidence standard in adjudicating acts of sexual misconduct consistent with other civil rights violations.³⁴

Expanding upon the requirements set under Title IX, the Dear Colleague Letter includes recommendations on other steps colleges can and should take to prevent sexual misconduct.³⁵ Included in the recommendations are education and prevention programs,³⁶ and remedies for the survivor of sexual misconduct that go beyond sanctions for the harasser or assailant.³⁷ While not a statute or regulation itself, the Dear Colleague Letter is a significant document in how to address campus sexual misconduct.

3. *The Campus SaVE Act and the Violence Against Women Act*

Congress approved the Campus SaVE Act when it reauthorized the Violence Against Women Act (“VAWA”) in 2013.³⁸ Section 304 of VAWA amended the Clery Act and § 1092 of the United States Code.³⁹ This amendment added a list of requirements for universities to follow regarding acts of dating violence, sexual assault, and stalking.⁴⁰ Included in the federal government mandates are: the development of policies regarding programs to prevent the above listed acts;⁴¹ education programs to promote awareness;⁴² ongoing prevention and awareness campaigns;⁴³ sanctions or protective measures when a student is found responsible for

³¹ *Id.* at 4.

³² *Id.* at 6.

³³ *Id.*

³⁴ *Id.* at 11. (Prior to the Dear Colleague Letter there was not a set or mandated evidentiary standard for college sexual misconduct investigations.)

³⁵ *Id.* at 14-19.

³⁶ *Id.* at 14-15.

³⁷ *Id.* at 15-19.

³⁸ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (codified as amended in scattered sections of 18-43 U.S.C.).

³⁹ *Id.*

⁴⁰ 20 U.S.C. § 1092(f)(8)(A)(i).

⁴¹ *Id.* at § 1092(f)(8)(A).

⁴² *Id.* at § 1092(f)(8)(B)(i).

⁴³ *Id.* at § 1092(f)(8)(B)(i)(II).

one of the acts;⁴⁴ procedures any victims should follow;⁴⁵ procedures for how a college will handle an accusation;⁴⁶ and resources that need to be made available to victims.⁴⁷ The Campus SaVE Act and the VAWA reauthorization in 2013 created the federal statutory mechanism for colleges to handle reports of sexual misconduct separate from any criminal prosecution that could be pursued under state or federal law.

Together, these laws set the federal standards for colleges to address sexual misconduct on their campuses. Beyond the federal regulations, the states can further define sexual misconduct and expectations of colleges in their adjudication of campus sexual misconduct.

C. THE RELATIONSHIP BETWEEN FEDERAL AND CALIFORNIA SEXUAL MISCONDUCT LAWS

California colleges must follow the federal laws on campus sexual misconduct and in addition to these laws the California Education Code expands on the federal laws and addresses campus violence. Title III of the California Education Code pertains to postsecondary education and provides that colleges have specific duties related to campus violence and sexual assault.⁴⁸ This section mirrors the Clery Act and requires colleges to compile records of campus violence and sexual misconduct and report them to the police or local law enforcement if they fall under specific categories.⁴⁹ Sexual assault is included in the categories of required reporting.⁵⁰ Under the designation of sexual assault, the California state legislature includes "rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or the threat of any of these."⁵¹

Since 1990, the California Education Code has mandated requirements for addressing sexual misconduct on college campuses.⁵² Through these statutes, the California legislature mandates that colleges develop policies and procedures to ensure that victims of sexual misconduct receive on or off-campus treatment for the misconduct as well as other information.⁵³ Per the California state legislature, the written policies colleges develop shall include: the college policy on sexual assault on campus; the personnel on campus who should be notified; the legal re-

⁴⁴ *Id.* at § 1092(f)(8)(B)(ii).

⁴⁵ *Id.* at § 1092(f)(8)(B)(iii).

⁴⁶ *Id.* at § 1092(f)(8)(B)(iv).

⁴⁷ *Id.* at § 1092(f)(8)(v)-(vi).

⁴⁸ EDUC. § 67380.

⁴⁹ *Id.* at § 67380(a)(6)(A).

⁵⁰ *Id.*

⁵¹ EDUC. § 67380(c)(3).

⁵² *Id.* at § 67385.

⁵³ *Id.* at § 67385(a).

porting requirements and how to fill them; services available to victims; a description of on and off-campus services for victims, procedures for case management; procedures for ensuring confidentiality, and information for victims regarding the school disciplinary process as well as any potential criminal process.⁵⁴

1. *The Addition of the “Yes Means Yes” Standard in California*

A recent update to the California Education Code’s section on higher education is the additional requirement of an affirmative consent standard in college student conduct policies.⁵⁵ Effective January 1, 2015, through the California “Yes Means Yes” bill, State law requires public and private colleges receiving state funding to adopt a specific consent standard into their student conduct policies regarding sexual activity.⁵⁶ The California law, like its federal counterparts – Title IX and the Violence Against Women Act – addresses acts of sexual assault, domestic violence, dating violence, and stalking.⁵⁷ The main addition of an affirmative consent policy⁵⁸ set California apart from every other state in the country at the time of its passage.⁵⁹

Under California law, affirmative consent means “affirmative, conscious, and voluntary agreement to engage in sexual activity.”⁶⁰ Beyond requiring affirmative consent and defining it, the California law states that “[l]ack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time.”⁶¹ The state legislature explicitly stated what consent means and what does not constitute consent.⁶² This definition as a practical measure removes the responsibility from colleges to define consent individually.

Additionally, the California legislature mandates that when an accused student believes he or she had affirmative consent during a sexual encounter, that potential consent is negated by the intoxication or recklessness of the accused, or when the accused did not take appropriate

⁵⁴ *Id.* at § 67386(b).

⁵⁵ *Id.* at § 67386.

⁵⁶ *Id.* at § 67386(a).

⁵⁷ *Id.*

⁵⁸ *Id.* at § 67386(a)(1).

⁵⁹ Christine Helwick, *Affirmative Consent, the New Standard*, INSIDE HIGHER ED (Oct. 23, 2014), <https://www.insidehighered.com/views/2014/10/23/campuses-must-wrestle-affirmative-consent-standard-sexual-assault-essay>.

⁶⁰ EDUC. § 67386(a)(1).

⁶¹ *Id.*

⁶² Under California law affirmative consent means “affirmative, conscious, and voluntary agreement to engage in sexual activity. EDUC. § 67386(a)(1).

steps to determine whether the complainant affirmatively consented.⁶³ The California legislature also states situations that automatically negate what the accused believed to be affirmative consent; including when the complainant was unconscious, intoxicated to the point of being unable to understand the fact, nature or extent of the sexual activity; and when the complainant had a mental or physical condition causing them to be unable to communicate.⁶⁴

The California law also reaffirms and codifies the federal requirement through the Dear Colleague Letter⁶⁵ that colleges must use the preponderance of the evidence standard when they adjudicate sexual misconduct cases on their campuses.⁶⁶

The California law further dictates the policies and processes colleges are expected to use when investigating accusations of sexual misconduct.⁶⁷ According to the statute, colleges are mandated to adopt "victim-centered policies and protocols" regarding sexual misconduct.⁶⁸ The topics policies shall cover are detailed in the statute and include: how the school shall protect the privacy of individuals involved;⁶⁹ victim interview protocol;⁷⁰ specific support information that should be provided to the victim;⁷¹ and the trainings that need to be provided to any campus professional staff involved in the investigation and adjudication process, specifically "comprehensive, trauma-informed" training.⁷² However, the statute does not describe in detail what these policies and procedures will entail. Instead, the statute reads that the policies and procedures must "comport with best practices and current professional standards."⁷³

In addition to an investigation into incidents of sexual misconduct, California made further requirements of colleges. One requirement is that colleges partner with community support programs, including rape crisis centers, to offer support for the victim and the accused.⁷⁴ Another requirement of the California statute is that colleges shall adopt "compre-

⁶³ EDUC. § 67386(a)(2).

⁶⁴ *Id.* at § 67386(a)(4).

⁶⁵ Ali, *supra* note 28, at 11.

⁶⁶ EDUC. § 67386(a)(3).

⁶⁷ *Id.* at § 67386(b).

⁶⁸ *Id.*

⁶⁹ *Id.* at § 67386(b)(1).

⁷⁰ *Id.* at § 67386(b)(4).

⁷¹ *Id.* at §§ 67386(b)(7)-(8).

⁷² *Id.* at § 67386(b)(12).

⁷³ *Id.* at § 67386(b).

⁷⁴ *Id.* at § 67386(c).

hensive prevention and outreach programs” against dating violence, stalking, sexual assault, and sexual violence.⁷⁵

Together, the federal and California laws create an outline for colleges to work with when adjudicating accusations of sexual misconduct on their campuses. These laws offer schools a baseline from which to start creating their policies and procedures, but they are not all encompassing of the issues that arise when a college takes on the role of investigating and adjudicating a complaint of sexual misconduct.

II. ARGUMENT: THE CURRENT FRAMEWORK FOR COLLEGES SHOULD BE EXPANDED

A. THE FEDERAL LAWS AND GUIDANCE OFFER A STARTING POINT FOR COLLEGES TO ADDRESS CAMPUS SEXUAL MISCONDUCT

The federal laws and standards described above offer the baseline standards for colleges as they create policies regarding campus sexual misconduct. First, federal guidance require colleges to affirmatively address campus sexual misconduct.⁷⁶ Second, the laws require colleges to use the preponderance of the evidence standard in their investigations and adjudications.⁷⁷ Third, the federal laws state for colleges some acts that count as sexual misconduct and must be reported, forcible or nonforcible sexual offenses.⁷⁸ What is left however is the need for more specific guidance considering the pervasiveness of the issue of sexual misconduct on college campuses and the diversity of experiences involved.

1. *The Pervasiveness of Sexual Misconduct on College Campuses*

Any discussion of policies and laws regarding sexual misconduct must acknowledge how pervasive the issue is on college campuses. College sexual misconduct has been characterized as an “epidemic”⁷⁹ and one which does not have an easy solution. Over the last several years, there have been multiple surveys created and sent out to colleges regarding sexual misconduct and the campus climate surrounding campus sexual misconduct. In 2014, the Association of American Universities (hereinafter “AAU”) created yet another survey on sexual assault and

⁷⁵ *Id.* at § 67386(d).

⁷⁶ Ali, *supra* note 28.

⁷⁷ *Id.* at 11.

⁷⁸ 20 U.S.C. § 1092(f)(1)(F).

⁷⁹ Laura L. Dunn, Comment, *Addressing Sexual misconduct in Higher Education: Ensuring Compliance With the Clery Act, Title IX, and VAWA*, 15 GEO. J. GENDER & L. 563, 565 (2014).

sexual misconduct.⁸⁰ This survey was distributed in the spring 2015 semester to 27 institutions of higher education across the United States, 26 of which were members of the AAU.⁸¹ The response rate for the survey was 19.3%, with a total of 150,072 students responding.⁸² The questions posed by the survey included the extent of nonconsensual sexual contact; the extent of sexual harassment, stalking, and intimate partner violence; who the victims of sexual assault or sexual misconduct are; who students report incidents to; and the campus climate around sexual assault and sexual misconduct.⁸³ The AAU found that the rates of sexual misconduct varied greatly among the 27 institutions of higher education surveyed, and the commonly reported "one in five" number is not representative of all schools.⁸⁴ Overall 11.7% of students reported experiencing nonconsensual penetration, or sexual touching by force or incapacitation since enrolling at the college.⁸⁵ This rate applies to the overall survey population and does not take into account gender, enrollment status, or a student's gender identity.⁸⁶ The percentage rose to 23.1% among females.⁸⁷ This survey, while not a complete representation of campuses across the country, reflects some extent to which sexual assault and sexual misconduct exist on college campuses.

2. *How the Federal Laws Address the Pervasive Issue of Sexual Misconduct on College Campuses*

The federal laws discussed in the background section of this Comment are designed to address and combat the ongoing issue of sexual misconduct on college campuses in the United States. The laws prohibiting sexual misconduct do not prevent all instances of sexual misconduct as evidenced by the AAU survey. They do, however, give colleges some guidance to address campus sexual misconduct.

Campus sexual assault investigations and adjudications are not meant to replace the criminal procedure; they are civil procedures, and criminal standards do not apply. As stated in the Dear Colleague Letter, campuses must use the civil preponderance of the evidence standard

⁸⁰ DAVID CANTOR ET AL., REPORT ON THE AAU CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT (Westat ed., 2015), https://www.aau.edu/uploadedFiles/AAU_Publications/AAU_Reports/Sexual_Assault_Campus_Survey/AAU_Campus_Climate_Survey_12_14_15.pdf.

⁸¹ *Id.* at iii-iv.

⁸² *Id.* at vi.

⁸³ *Id.* at iii.

⁸⁴ *Id.* at v.

⁸⁵ *Id.* at viii.

⁸⁶ *Id.* at viii-ix.

⁸⁷ *Id.* at 13-14.

when adjudicating sexual assault and sexual misconduct.⁸⁸ In defending the preponderance of the evidence as the appropriate standard, it has been noted that Title IX is not a criminal statute; it is a civil rights statute.⁸⁹

In addition to the preponderance of the evidence standard, sexual misconduct complaints on college campuses are considered under the civil rights standards of “severe or pervasive” or “unwelcome” under Title IX.⁹⁰ Within the context of sexual assault, these civil rights standards are difficult to apply. A recent article on affirmative consent pointed out that “sexual assault is by its nature ‘severe’ and ‘unwelcome.’”⁹¹ As a civil rights law, Title IX also requires proof of “offensiveness” for sexual misconduct to be found.⁹² The combination of these words provides for protection to an accused student, in that the actions being investigated must be found to be offensive for a student to be found responsible⁹³ for sexual assault.

In considering all of the standards mandated through Title IX, the Dear Colleague Letter specifically states how colleges should address accusations of sexual misconduct on campus.⁹⁴ A college’s response to accusations of sexual misconduct is the major focus of the letter.⁹⁵ In the entire letter, consisting of 19 pages, there is less than one full page dedicated to prevention and education related to sexual misconduct.⁹⁶ This short directive encourages colleges to create preventative education programs and make victim resources available.⁹⁷ Additionally, the Dear Colleague Letter states that the education programs should include information about what constitutes sexual harassment and sexual misconduct, the school’s policies and procedures, and should also be aimed at encouraging students to report incidents of sexual misconduct.⁹⁸ The minimum requirement of the college sexual misconduct education programs mandated in this letter is that students should know how to respond to cam-

⁸⁸ Ali, *supra* note 28, at 10.

⁸⁹ Amy Chmielewski, Comment, *Defending the Preponderance of the Evidence Standard in College Adjudications of Sexual Assault*, 2013 BYU EDUC. & L.J. 143, 146-47 (2013).

⁹⁰ Wendy Murphy, *Title IX Protects Women. Affirmative Consent Doesn’t.*, WASH. POST (Oct. 15, 2015), <https://www.washingtonpost.com/news/in-theory/wp/2015/10/15/title-ix-protects-women-affirmative-consent-doesnt/>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Because campus sexual assault investigations do not use criminal standards the words “guilty” or “innocent” do not apply. A finding of “responsibility” here describes a student found to have committed sexual misconduct through college or university adjudicatory procedures.

⁹⁴ Ali, *supra* note 28 at 10.

⁹⁵ Ali, *supra* note 28.

⁹⁶ *Id.*

⁹⁷ *Id.* at 14.

⁹⁸ *Id.* at 14-15.

pus sexual misconduct.⁹⁹ However, the Dear Colleague Letter and Title IX do not discuss how students are supposed to recognize campus sexual misconduct, especially when it fits into the grey area as illustrated by Chris and Alex at the beginning of this Comment.

Taken together, colleges are responsible for adjudicating allegations of sexual misconduct, while using civil rights standards – as opposed to criminal standards – in the adjudication process. This is the baseline the federal government has set for colleges receiving federal funding under Title IX.¹⁰⁰ This does not, however, mean that individual states or colleges must only abide by the standards set by the federal government.

B. THE CALIFORNIA "YES MEANS YES" STANDARD CHANGES HOW COLLEGES FRAME SEXUAL MISCONDUCT

The "Yes Means Yes," or affirmative consent standard, represents California's attempt to take what the federal government mandates, and further define what counts as sexual misconduct. Filling the gap left by The Dear Colleague Letter and other federal laws, the "Yes Means Yes" bill details how colleges are expected to take an affirmative step towards preventing sexual misconduct on their campuses.

First, the addition of California Education Code § 67386 provides that only affirmative consent will be accepted as consent in investigations and adjudications of campus sexual misconduct.¹⁰¹ Second, it states that colleges in California must adopt a "comprehensive prevention and outreach program" related to sexual misconduct.¹⁰² Included in this program are "empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction."¹⁰³

1. *The Affirmative Consent Standard*

The first addition of an affirmative consent standard in adjudications is controversial. Wendy Murphy, an adjunct professor of sexual misconduct law at New England Law, criticized that using the affirmative con-

⁹⁹ *Id.*

¹⁰⁰ 20 U.S.C. § 1681 (2016) (As of the writing of this article no college has had its funding revoked because of its failure to comply with the mandates regarding sexual assault under Title IX though 124 are under investigation for compliance. See Tyler Kingkade, *124 Colleges, 40 School Districts Under Investigation for Handling of Sexual Assault*, THE HUFFINGTON POST (July 24, 2015, 2:06 PM), http://www.huffingtonpost.com/entry/schools-investigation-sexual-assault_us_55b19b43e4b0074ba5a40b77).

¹⁰¹ EDUC. § 67386(a).

¹⁰² *Id.* at § 67386(d).

¹⁰³ *Id.*

sent standard for a sex-based offense “establishes a hierarchy in which violence against women is seen as less serious compared with violence against other protected-class students.”¹⁰⁴ Professor Murphy argues that this standard goes against the Title IX and civil rights standard of “unwelcomeness” that has been used historically because the student just has to show that they did not consent, not that the act was unwelcome.¹⁰⁵ She adds that the traditional civil rights standard is being overthrown by a new standard applicable only to California.¹⁰⁶

Another critique is that the affirmative consent policy is an “intrusion into private sexual behavior.”¹⁰⁷ What we have yet to see however, is whether this affirmative consent standard and the other pieces of the law will reduce the number of incidents of sexual misconduct on college campuses. Some of the strongest criticism has been that the affirmative consent standard harms the accused, in that they have to prove that they did have consent, shifting the burden from the complainant to the accused in an unfair fashion.¹⁰⁸

Proponents of the affirmative consent policy argue that the policy removes the burden of the complainant proving resistance, and instead showing that they did not consent, or that consent was withdrawn at some point.¹⁰⁹ The accused would then have to explain how and why they believed there was consent throughout the sexual encounter.¹¹⁰ The burden stays on the complainant to show that they did not consent to the entire sexual encounter. Proponents of the bill also state that adopting this policy creates the rules about what responsibilities the parties have prior to, and during a sexual encounter to discuss, or at least consider their expectations.¹¹¹

The mandate of affirmative consent created a new dialogue for colleges to have with students regarding how they approach sexual encounters, whether or not it actually changes how colleges address sexual

¹⁰⁴ Murphy, *supra* note 90.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Helwick, *supra* note 59.

¹⁰⁸ Katherine Mangan, *What “Yes Means Yes” Means for Colleges’ Sex-Assault Investigations*, THE CHRONICLE OF HIGHER EDUCATION, (Sept. 3, 2015), <http://www.chronicle.com/article/What-Yes-Means-Yes-Means/232839>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

misconduct.¹¹² As one author has stated, "young people are embracing affirmative consent."¹¹³

Jaclyn Friedman, an expert on sexual health and sexual misconduct prevention, wrote that the "Yes Means Yes" bill answers many questions students have about sexual encounters.¹¹⁴ Ms. Friedman says the bill tells students "who have trouble setting boundaries that a good partner wants to know what your limits are"¹¹⁵ This standard allows students to take control of what they want in an intimate encounter, whether it is sexual or not, and communicate knowing that the standards support their decision, whatever they choose to do. Ms. Friedman also explains that "affirmative consent encourages young people to get to know their own needs and desires and boundaries."¹¹⁶ It allows students to explore themselves and their own sexual preferences and feel affirmation in their decisions regarding sex and sexual encounters. Ultimately, Ms. Friedman states that the new affirmative consent laws are "a great opportunity to teach the kind of sexual communication that makes sex both better and safer for everyone."¹¹⁷ Though imperfect, like most laws, the affirmative consent law and policy that follow encourages students to embrace their sexuality and take control of their sexual lives.

The writers of the "Yes Means Yes" bill intended the new standard to fix what had previously been ineffective.¹¹⁸ According to Kevin de Leon and Hannah-Beth Jackson, two California state senators who authored the bill, the previous "no means no" standard had become ineffective through the years due to its use and interpretation.¹¹⁹ The previous "no means no" standard places the burden on victims of sexual misconduct, and has been twisted into offensive slogans,¹²⁰ effectively negating

¹¹² California law requires colleges to conform to an affirmative consent standard, however this Comment is meant to acknowledge that some schools had changed to an affirmative consent standard prior to the passage of the law. CAL. EDUC. CODE § 67386(a)(1) (West 2016).

¹¹³ Jaclyn Friedman, *Adults Hate 'Yes Means Yes' Laws. The College Students I Meet Love Them.*, WASH. POST (Oct. 14, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/10/14/adults-hate-affirmative-consent-laws-the-college-students-i-meet-love-them/>.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Kevin de Leon & Hannah-Beth Jackson, *Why We Made 'Yes Means Yes' California Law.*, WASH. POST (Oct. 13, 2015), <https://www.washingtonpost.com/news/in-theory/wp/2015/10/13/why-we-made-yes-means-yes-california-law/>.

¹¹⁹ *Id.*

¹²⁰ On one college campus, members of a college fraternity were disciplined for changing the "no means no" slogan into "No means yes, yes means anal," then chanting it in front of a female dormitory. See Lindsay Beyerstein, "No Means Yes, Yes Means Anal" Frat Banned From Yale, BIG THINK, <http://bigthink.com/focal-point/no-means-yes-yes-means-anal-frat-banned-from-yale> (last visited Nov. 5, 2016).

any power it once had.¹²¹ Using a new standard changes the conversation to one of empowerment between two people to assert their preferences and desires. The new standard mandates and allows for colleges to approach the conversation regarding sex and sexual encounters in a new way that empowers students in their decisions. It also allows for students to understand what to expect from their sexual encounters – that affirmative consent will be the only way to consent – and to encourage a healthy dialogue between two people in their sexual choices.

2. Preventative Education

The requirement of preventative education programming around sexual assault and sex education is the second significant addition to the California Education Code through the “Yes Means Yes” bill. The California legislature sets a timing requirement for outreach programming, mandating that it shall be included in incoming student orientation for every student.¹²² Effectively, the California legislature mandates that colleges take steps to address campus sexual misconduct before it happens, requiring preemptive action by educating students on issues of sexual misconduct before a complaint of sexual misconduct is made.

The authors of the bill explained that the law is meant to encourage colleges to take a step towards preventing sexual misconduct.¹²³ The education portion of the bill is crucial to the adjudication under an affirmative consent standard because students need to know what consent is and what it is not. Additional authority has determined that early education is crucial in fixing the problem of sexual misconduct.¹²⁴

While it is unlikely that increased education will fix all problems around sexual misconduct, it will be a significant step in the right direction towards prevention. The actual adjudication of sexual misconduct can be improved, but if sexual education is the first focus for improvement, then there will likely be fewer adjudications. From there the process can be improved when it is less impacted. While Title IX and other federal laws mandate how colleges should address sexual misconduct *after* it has occurred through an investigation and adjudication process, the California law improves upon and defines the process of handling sexual misconduct by addressing sexual activities *before* there is an investigation into alleged violence. Because of some cultural aversion to discuss-

¹²¹ de Leon & Jackson, *supra* note 117.

¹²² EDUC. § 67386(e).

¹²³ de Leon & Jackson, *supra* note 117.

¹²⁴ Annie E. Clark, *Why Are We Waiting Until College to Learn About Consent?*, WASH. POST (Oct. 14, 2015), <https://www.washingtonpost.com/news/in-theory/wp/2015/10/14/why-are-we-waiting-until-college-to-learn-about-consent/>.

ing sex in the United States,¹²⁵ education around sex and consent is crucial to the enforcement of any sex-based policies or laws. The California law is a positive first step towards a healthier and more open dialogue about sex.

Much of the conversation surrounding the "Yes Means Yes" bill and the affirmative consent standard has focused on how the actual affirmative consent standard will affect the investigations and adjudications.¹²⁶ However, taking preventative measures against sexual misconduct as the "Yes Means Yes" bill mandates, is a way for colleges to engage their students in the dialogue of sex and sexual relations. It also asks students to think about their personal preferences and desires. As Ms. Friedman discussed, this inner dialogue a student will have because of the education on affirmative consent will help the student to continue to mature and grow into the conscientious adults colleges are meant to educate.¹²⁷ The early education will also ensure that students at each school are provided with the same information about what does and does not constitute consent.

While the "Yes Means Yes" bill and policies are not perfect, they do mandate colleges to use new tools and standards both to prevent and address sexual misconduct on their campuses. This is a new approach, and while it is untested it aims to improve the ways to effectively address issues of sexual misconduct on college campuses. As implementation proceeds, administration must take note of additional gaps to be addressed regarding college sexual misconduct, including the effects of the process on the accused, and the selection and training of the parties adjudicating sexual misconduct on college campuses.

C. THE FEDERAL AND STATE LAWS GOVERNING CAMPUS SEXUAL MISCONDUCT ARE INCOMPLETE: RECOMMENDATIONS

Consent is the current theme for colleges when discussing sexual misconduct, especially in states such as California where the law now has a mandatory affirmative consent policy for colleges. There are however, a host of other issues related to campus sexual misconduct that will need to be addressed, either by the individual schools, or on a state or national level.

One issue to address is how the investigation and adjudication process affects students accused of sexual misconduct. The processes in place now are meant to investigate and adjudicate, as well as support

¹²⁵ Friedman, *supra* note 112.

¹²⁶ Mangan, *supra* note 107; Helwick, *supra* note 59; Murphy, *supra* note 90.

¹²⁷ Friedman, *supra* note 112.

student victims, but the experiences of the accused must also be improved throughout the process. A second issue to address and improve upon is identifying and training the individuals who will investigate and adjudicate accusations of sexual misconduct on college campuses. There are different groups on college campuses addressing the problem across the country. Who these groups are, and who they should be, is a lingering issue.

1. *Support for the Accused Student*

One way to initiate an investigation into sexual misconduct on a college campus is a student reporting sexual misconduct by another student.¹²⁸ Under the current laws and policies, the complainant has a number of resources available.¹²⁹ The Dear Colleague Letter states that the school must protect the complainant in the educational setting.¹³⁰ These protections include options to avoid contact with the accused student, counseling, and potential housing changes during the investigation process.¹³¹ Throughout the Dear Colleague Letter, the focus is on the protection and safety of the complainant.

The Dear Colleague Letter does not address in any detail however, how to support the accused student throughout the process. One process available for the accused student is providing them with a prompt and equitable resolution.¹³² This requirement of an equitable and prompt resolution however, is addressed to the complainant, not the accused student. The only other support the Dear Colleague Letter provides for an accused student is the opportunity to present witnesses and evidence on their behalf during a hearing.¹³³

The federal and California laws do not address how to support the accused student throughout the investigation process. When any complaint of sexual misconduct is made, it is supposed to be treated just like that: a complaint. The complaint is not a final decision that an act of sexual misconduct occurred.¹³⁴ The investigation processes are designed

¹²⁸ Title IX investigations can be triggered by complaints against students, faculty, or third parties. The focus of this Comment is on interactions between students.

¹²⁹ The Dear Colleague Letter is the federal standard and mandate that has the most descriptive Title IX requirements, so it will be the only mandate analyzed in this section.

¹³⁰ Ali, *supra* note 28, at 10.

¹³¹ *Id.* at 15-16.

¹³² *Id.* at 8.

¹³³ *Id.* at 11.

¹³⁴ This means that a complaint is not taken as the whole truth for investigatory purposes. Related to this issue is how schools address the complainant when making their complaint and how the complainant is treated, this topic however is outside the scope of this Comment.

to determine whether an act of sexual misconduct happened.¹³⁵ They are not assuming that an act of sexual misconduct occurred.

These processes do not generally consider the impact investigations have on the accused because they are designed to protect and support the complainant. In the investigation and adjudication process, the accused should have the same level of support available to them as the complainant. The accused should be given the same rights as the complainant to counseling services, educational services, and housing changes, among other supportive services. The process itself can be harmful to the accused, when they must endure interviews and questions about an event not only considered private, but also one they may not think was wrong. Recall the opening story: a student such as Alex may not know anything was wrong with the encounter, and an investigation into the conduct may harm him in some way. It should be mandated that the same supportive services offered to the complainant be made available and offered to the accused because colleges are not legal systems – they are meant to support and educate their students.

There are also arguments that the process and potential sanction harms those accused beyond how the process and sanction itself affects their lives.¹³⁶ A first issue is how a finding of responsibility¹³⁷ of an act of sexual misconduct through a college process affects the accused's reputation. Unlike the criminal justice system, an accused student found responsible is not incarcerated. However, they do receive some form of sanction from their college, which can include suspension or expulsion. This sanction can end up on their school records and transcripts, which may in the future be sent to potential employers, graduate schools, or others.¹³⁸

Adjudicating sexual misconduct, especially on a college campus, can be complicated and challenging. The complainant and accused are clearly adverse, and attitudes of the campus community about one or both of them may be as well. On one hand, any accusation of sexual misconduct must be taken seriously because it is a serious offense, and if a student is responsible, they should be punished accordingly. On the other hand, college is an exceptional learning experience for students who have an opportunity to develop through academics and campus life in a relatively safe environment, and where they can be, and are, encouraged to learn from experiences instead of only being punished be-

¹³⁵ Ali, *supra* note 28, at 10.

¹³⁶ Alexandra Fries, Note, *Student-on-Student Sexual Assault Policy: How a Victim-Centered Approach Harms Men*, 39 J.C. & U.L. 633, 635-36 (2013).

¹³⁷ Since this is not a criminal event, the word "guilty," is not generally used. The term "responsible" will be used when a student was found to have committed an act of sexual misconduct.

¹³⁸ Fries, *supra* note 135, at 641.

cause of them. If colleges are going to be addressing sexual misconduct on their campuses, they should be addressing it not only as a punishable offense, but in at least some circumstances where appropriate as an opportunity to teach students about safe sexual encounters.

Colleges should be mandated to take an active role in educating safe sex practices to students found responsible of sexual misconduct regardless of the punishment inflicted on a student found responsible for sexual misconduct. Colleges should be mandated in addition to punishing a student found responsible, requiring education of students found responsible on safe practices related to the sexual misconduct, which could be alcohol or drug education as well as counseling. The schools do not have to educate the students they find responsible through their own programs. They must however, be mandated to require services to help students learn about safe sexual practices. This can include requiring counseling, courses in gender studies, drug and alcohol programs, or other educational settings.

Colleges are in the business of educating. In the extreme circumstances where they choose to permanently expel a student because of sexual misconduct, they would be failing in their business if they did not offer educational opportunities to a student who joins their community. If the college expels a student found responsible of sexual misconduct, especially if the act is a violent rape, the school has a responsibility to the wider community to do more than just remove a student from their insulated community and send them back into society.

2. *Investigating Sexual Misconduct on College Campuses*

The mandates by the federal and state governments do not state who is expected to investigate and adjudicate allegations of sexual misconduct, but this role should be affirmatively defined and cast. The Dear Colleague Letter states that “all persons involved in implementing a recipient’s grievance procedures (e.g., Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual misconduct, and the recipient’s grievance procedures.”¹³⁹ The letter and other laws do not state who those “persons” are supposed to be. They may be students, faculty, staff, or a combination of the three.¹⁴⁰ The only known requirement set by the

¹³⁹ Ali, *supra* note 28, at 12.

¹⁴⁰ See University of the Pacific, *Tigre Lore: Student Code of Conduct 2016-17*, UNIVERSITY OF THE PACIFIC 48, <http://www.pacific.edu/Documents/student-life/judicialaffairs/Tiger%v20Lore%20Code%20of%20Conduct%202016-17.pdf> (last visited Mar. 08, 2017). At the University of the Pacific, a hearing panel of three people may be composed of trained faculty, students, or staff. *Id.*

federal government is that all colleges must have a full-time Title IX Coordinator.¹⁴¹ This implies that at every school, there is at least one full-time administrator who is available to address accusations of sexual misconduct.

The issue however, is the inconsistency as to who else on college campuses is handling these issues and what trainings these individuals are receiving. There is no definitive answer and each college is unique in both regards. There should be uniform expectations, either by state or nationally, regarding who investigates and adjudicates campus sexual misconduct, and what trainings these individuals should receive. Students should not be responsible for investigating or adjudicating allegations of sexual misconduct. Putting a student in the position of making decisions around another student's sexual behavior is not appropriate or fair to any of the students involved. For example, at a small private college with fewer than 4,000 students, it can be near impossible to create an impartial hearing board that did not know of either the complainant, accused, or both. It is also possible that the story of the incident, which may or may not be accurate, is spread before it is investigated or adjudicated. This could harm all parties involved and remove any possibility of an impartial or fair hearing. Considering the evidence for and adjudicating an act of sexual misconduct of someone close to you is not appropriate for a college student. It could also cause trauma to the students adjudicating the alleged violence, causing harm to others who did not need to be involved.

The process should only be handled by full-time staff or faculty members on college campuses or appropriate third parties. It should also be done by a set few of this group who receive detailed and thorough training into the school's sexual assault policies. Ideally, the school will have a wide pool of individuals to choose from and the adjudication will be overseen by an impartial subset of this group. Their training should also include courses or seminars in student development. College students are in a unique place in their lives and college is a unique place itself. Those who investigate and adjudicate sexual misconduct should understand college student development, and how college-aged students grow and mature in college. If colleges are expected to investigate and adjudicate sexual misconduct independent of the criminal justice system, those who are doing the investigating and adjudicating should understand this group of students. There should also be training on the investigative

¹⁴¹ Letter from Catherine E. Lhamon, *Dear Colleague Letter on Title IX Coordinators*, DEPARTMENT OF EDUCATION: OFFICE FOR CIVIL RIGHTS 1 (Apr. 24, 2015), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>.

process, including sensitive interviewing techniques and how sexual misconduct affects both the complainant and the accused.

III. CONCLUSION

Colleges have special responsibilities to the students they teach. They are expected to guide students through their learning process, yet they are also expected to investigate and adjudicate what can be considered a violent crime. The federal government has laid out a series of laws that mandate how colleges are expected to do this, but they are only a starting point. The California “Yes Means Yes” law, while not a comprehensive solution to the issues raised by the mandatory adjudication process, addresses key issues in the investigation and adjudication processes; the definition of consent; and when someone absolutely cannot give consent. It also mandates preventative education for all incoming college students, ensuring dialogue among college students regarding sex and how to address it in their lives ensues.

The law raises more questions however, and leaves space for improvement in areas that need attention similar to that given to the issue of consent, such as resources for the accused and the identity and training of the investigators and adjudicators. Colleges should support the accused students in the same way they are expected to support the complainant. The process is difficult and strenuous for all involved, and the accused has the same right to support as the complainant. The individuals investigating and adjudicating campus sexual misconduct should receive uniform training, including the school policies and procedures, investigation techniques, and college student development. The process should not be undertaken lightly, and the individuals investigating should be given all the tools necessary to make a careful and informed decision. Chris and Alex’s story can be prevented through the “Yes Means Yes” bill and continued development of policies and procedures for colleges.