

## **Affirmative consent law (SB 967, DeLeón bill)**

67386. (a) In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking, as defined in the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1092(f)) **involving a student, both on and off campus**. The policy shall include all of the following:

(1) An **affirmative consent standard** in the determination of whether consent was given by both parties to sexual activity. **“Affirmative consent” means affirmative, conscious, and voluntary agreement 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. **Lack 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. 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.**

(2) A policy that, in the evaluation of complaints in any disciplinary process, **it shall not be a valid excuse to alleged lack of affirmative consent** that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:

(A) The accused’s belief in affirmative consent arose from the intoxication or recklessness of the accused.

(B) The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

(3) A policy that the standard used in determining whether the elements of the complaint against the accused have been demonstrated is the **preponderance of the evidence**.

(4) A policy that, in the evaluation of complaints in the disciplinary process, **it shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity** if the accused

knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances:

(A) The complainant was **asleep or unconscious**.

(B) The complainant was **incapacitated due to the influence of drugs, alcohol, or medication**, so that the complainant could not understand the fact, nature, or extent of the sexual activity.

(C) The complainant was **unable to communicate due to a mental or physical condition**.