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Resolution #17-03

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Purpose: To replace the current effective consent policy with a new affirmative consent policy to resolve any ambiguity and providing clear and concise definitions of what is and is not consent.

Whereas: Sexual assault is a serious crime that stands in opposition to Creighton's values and Catholic identity.

Whereas: Many students have been wronged by the ineffectiveness and ambiguity of the policies surrounding sexual assault, rooted in an unclear policy on situations around consent.

Whereas: The current definition of consent in Creighton University's Handbook, located in University Policy Section JJ Under "Effective Consent" is inadequate.

Whereas: Currently, the policy is titled "Effective Consent" and places the burden on the victim to prove consent.

Whereas: Creighton's Effective Consent policy places blame upon the victim, as well as the burden to prove consent upon the victim.

Whereas: We must shift from a "no means no" policy that places the onus on the victim to stop any action to a "yes means yes" policy that requires clear and affirmative consent.

Whereas: We suggest specific improvements to the current Creighton University policy in order to provide for affirmative consent.

Whereas: The improvements below have been inspired by current sexual policies from other Jesuit and Catholic institutions such as Saint Louis University, Villanova University, College of the Holy Cross, Fordham University, and area schools like the University of Iowa and the University of Minnesota.

Whereas: The first line of the current Creighton Effective Consent policy reads "Effective consent is informed, freely and actively given, and consists of mutually understandable words or actions indicating a willingness to engage in mutually agreed-upon sexual activity."

Whereas: The first line of the Creighton consent policy definition should be corrected to encompass the definition of affirmative consent which reads "Consent is freely and affirmatively communicated between both partners in order to participate in sexual activity or behavior. This is expressed by clear and unambiguous words or actions (e.g. "yes" or nodding head.)"

Whereas: The above change strengthens the threshold and clarifies how consent should be expressed.

Whereas: The second line of the Creighton effective consent policy currently reads, “It is the responsibility of all persons wishing to engage in sexual activity with another to specifically determine the capacity of that potential sexual partner to provide ‘Effective Consent.’”

Whereas: The second line of the Creighton consent policy definition should be corrected to, “It is the responsibility of the person initiating the sexual activity to obtain the affirmative consent of the other party throughout the duration of said activity.”

Whereas: The Current Creighton Effective Consent policy continues to list a number of situations in which a person may not consent, including being unconscious, intimidated, or frightened.

Whereas: We propose the addition of “being physically helpless” to the above list of situations in which consent cannot be given or implied.

Whereas: According to an article based off research from Pennsylvania State University in 1991, 37% of rape survivors indicated they felt paralyzed or were unable to move.” The article continues to explain that this “freeze” reaction is “a state of profound motor inhibition typically elicited by a high fear situation.”

Whereas: Consent should not be given when a person is physically helpless.

Whereas: Under the “Additionally” section, the current Creighton Effective consent policy lists additional clarifications to the policy, including clauses on revocation of consent and silence and passivity.

Whereas: The current revocation of consent clause reads, “Consent may be revoked at any time, as long as the revocation is communicated clearly, at which point sexual activity must cease immediately.”

Whereas: The revocation sentence should be followed with, “If there is confusion as to whether anyone has consented or continues to consent to sexual activity, it is essential that the participants stop the activity until the confusion can be clearly resolved.”

Whereas: The above addition provides a course of action to resolve confusion over consent.

Whereas: The current Creighton Effective consent policy sentence on silence reads, “Silence and passivity cannot be interpreted as an indication of consent.”

Whereas: Another sentence must be added below this, reading “Lack of physical resistance or verbal refusal is not consent.”

Whereas: This addition clarifies that any “freeze” reaction as noted above cannot be interpreted as silence or passivity.

Whereas: The above policy changes aim to provide a stronger definition of the situations in which consent can and cannot be given, and aim to empower the victim.

BE IT ENACTED THAT: The Creighton University Student handbook University Policy on effective consent will be replaced with an affirmative consent policy. We recommend the above changes in wording that show clear definitions and situations in which consent is given.