



Where to Start:

Drafting, Implementing, and Enforcing No Contact Orders for Sexual Violence Victims on College Campuses



The Victim Rights Law Center's "Where to Start" series is a resource for administrators seeking to address sexual violence at higher education institutions across the country. As campus sexual violence has risen to the forefront of our national consciousness, institutions are looking for help to address it adequately. This has led to a desire for quick answers and "one size fits all" solutions. However, in VRLC's experience working with victims as well as institutions nationally, this approach often fails to meet the needs of both victims and campus administrators. Every campus is unique, as is each jurisdiction, Indian tribe, or territory, thus the information in this series serves as a guide. It is intended to begin a conversation on your campus which will help you identify current gaps and decisions you need to make in order to close those gaps. The goal of the series is to create an informed, appropriate, and consistent response to sexual violence on your campus that contemplates the size, culture, resources, and specific needs of your institution. As you begin to utilize this series, please keep in mind that the information provided is not legal advice and that you should always consult with a local attorney, your general counsel, or jurisdiction laws if you have questions.

Title IX requires¹ college and university administrators to take immediate action to eliminate a hostile environment once they determine that it exists, including taking steps to protect the victim and ensure their safety. As a result, many colleges and universities use institution-issued "No Contact Orders" (NCOs) to prevent contact between a student who has reported sexual violence and the accused student. While NCOs can be effective tools, administrators should not underestimate what is required to ensure that they are issued and enforced properly. Unfortunately, because every institution varies widely in size, culture, and structure, it takes some work up front to get it right. For example, on campuses with multiple dining halls or more than one gym, NCOs may be easier to draft and implement. For smaller institutions with limited dining hours or rules requiring students to live on campus, implementing NCOs may be more challenging. This guide serves as a resource to encourage administrators to ask the right questions in order to proactively address issues that may arise while drafting and enforcing NCOs on campus.

A note about language... Because students often ask for No Contact Orders as a safety measure and there may not be a concurrent disciplinary process, we avoided using "Complainant" and "Respondent" language. Additionally, because the contact that occurs following a report of sexual violence is often verbal harassment, cyber stalking, or other retaliatory behaviors, we chose to use the terms "victim" and "harasser."

¹ U.S. Department of Education, "Questions and Answers on Title IX and Sexual Violence," April 29, 2014.
<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

Before you begin:

Prior to drafting your institution’s NCO, consider your institution’s policy, culture, logistics and laws specific to your campus and jurisdiction. This will be critical to the successful drafting, implementation, and subsequent enforcement of NCOs at your institution.

Policy:

Identify which section(s) of your institution’s policy will address how to obtain an NCO as a safety measure, which administrators or departments will issue and approve an NCO, and how a violation will be addressed. If a violation of an NCO is not a violation of your institution’s student conduct policy, consider whether there is an adequate enforcement mechanism. If there is no enforcement mechanism, consider how you can begin the process of enhancing your institution’s policy.

Practice Tip: Be aware that if a student makes a report and requests confidentiality, issuing an NCO results in notice to the accused student and a violation of that confidentiality.

Logistics:

Consider the roles that the size, structure, and layout of your campus have when issuing NCOs. If your institution currently has an NCO process, identify challenges or limitations that you have confronted. Collaborate with public safety, student affairs, faculty, students, and other staff to discuss the practical requirements each group plays in the successful drafting, implementation, and enforcement of an NCO.

Jurisdictional Law:

Research your jurisdiction’s laws regarding civil protection and restraining orders. These orders are enforceable in a court of law, and therefore, you must enforce them on your campus. Familiarize yourself and first responders with eligibility requirements and the process required to obtain an order. Determine how administrators will inform students about this option in an adequate and consistent manner. Discuss with your campus leadership and general counsel ways that administrators can deliver this information to students without advising them about whether they should or should not seek an order. Consider creating a resource page that can be given to students concerned about their safety. The resource page should include community resources or organizations that can help them through the process.

Drafting Your NCO:

If your institution issues an NCO, it is very important that it is captured in writing. Too often, institutions issue NCOs informally and verbally. This leads to misunderstandings and creates difficult enforcement issues down the line when administrators have to rely on what they “think” they may have told the students about what constitutes a violation and/or what a student may recall s/he heard. Providing students with a document that

they can reference helps to avoid these issues because it articulates what is required under the NCO. Drafting and utilizing an NCO template also helps to ensure that the institution is handling allegations in a consistent and equitable manner, as required by Title IX. Consider whether and how your institution’s NCO will handle particular circumstances. While there is no “right” answer, it is critical to fully explain to both parties, verbally and in writing, whether the types of contact below constitute violations of your institution’s NCO.

Incidental contact:

Considerations: While it is nearly impossible to eliminate the possibility of incidental contact, it is important that the enforcing administrators understand the difference between incidental and intentional contact and explain these differences, both in writing and verbally, to the involved parties. The line between incidental and intentional contact can often be blurred and difficult to understand for both students and administrators. Many victims recognize that they may not be able to avoid a harasser entirely, but failing to clearly communicate this can lead to victims feeling confused or unsafe when they later try to report incidental contact.

For example, if a victim is walking out of the same class building as the harasser is walking in, this is likely incidental contact. If the harasser returns at the same time of day several times over the course of the next week, thereby changing his/her route in order to “incidentally” run into the victim, this is intentional contact. What started as incidental can easily move into the realm of intentional if the harasser changes his/her habits and behaviors in an effort to cause fear or discomfort to the victim. Harassers often use these ambiguous situations as a means of harassment. This demonstrates yet another reason why written NCOs are critical.

Administrators should discuss safety planning and schedules with both students and be specific about ways the students may be able to avoid contact. This also helps administrators recognize when intentional contact arises.

Third party contact:

Considerations: If issued effectively, including third party contact as a violation of your institution’s NCO can limit retaliation. It is important to clearly understand and then articulate what constitutes third party contact (“*John has a message for you - you will regret reporting him.*”) versus contact that is merely about the accused student or the allegations (“*John told me that you reported*”).

Practice Tip: An institution will have difficulty using an NCO issued against a single student as an effective means to eliminate widespread harassment. If a victim is being sexually harassed by a group of students, such as a team, fraternity, sorority, etc., an institution should ensure that the hostile environment is eliminated and may also consider mandatory gender-based harassment training by an administrator or advocate on campus.

him for sexual assault.”). While the former constitutes **direct** third party contact, it is much harder to prevent the latter example. In the former example, John is sending a message to the victim through a third party. In the latter example, a third party is merely mentioning that s/he heard about the sexual violence allegations. Explaining this difference to both parties thoroughly and through the use of examples is critical.

Cyber contact:

Considerations: Campus administrators are often forced to grapple with difficult “proof” issues with cyber contact, which can cause them to shy away from including it under their institution’s NCO. For example, students often log in to one another’s social media accounts and the result can be a tangled series of evidentiary issues when students claim a third party made contact through their account. On the other hand, this is one of the primary ways students communicate and social media is a tool often used by harassers. Creating a dialogue with both the victim and the harasser at the time the NCO is issued will help mitigate these issues. Explaining that students will be responsible for any contact made through their social media accounts gives both parties the ability to change passwords or notify family or friends who may be joint users. It also allows campus administrators to consistently enforce cyber contact as an NCO violation.

Off-campus contact:

Considerations: Determining whether to include off-campus contact in your NCO depends on your campus layout and culture. We often suggest that NCOs prohibit direct verbal and physical contact **regardless of geography**. This is of particular importance at institutions where campus boundaries are unclear. For example, students at an urban institution are unlikely to understand where campus and city property lines start and end. This may lead to confusion on the part of the victim, who will want to be clear about where s/he is protected and where the NCO does not apply.

Including off-campus contact is not without its challenges. The difficulty often arises when an institution requires a harasser to leave a situation or location upon the victim’s arrival or upon seeing the victim. Because of the difficult proof and jurisdictional issues, it is not feasible to require this in an off-campus setting. For example, if the two students were to see each other while in Florida on spring break, it is not realistic to tell the harasser that s/he has the burden to leave a restaurant or club because the victim is there.

Practice Tip: If applicable, this may be an appropriate time to discuss the Civil Protection Orders available in your jurisdiction. Consider informing students that they may have additional safety options available to them and resources they can use to help exercise those options.

Regardless of the geographical challenges a campus presents, administrators cannot turn a blind eye toward these issues. Administrators need to make deliberate, informed decisions that contemplate the best way to keep the victim safe, while not infringing on the rights of the harasser, and communicate those policies to both students.

Implementing Your NCO

Mutual vs. Unilateral

The Department of Education's April 2011 Dear Colleague Letter (DCL) states that schools should minimize the burden on the victim when taking steps to separate the students. For institutions that choose to use mutual orders, carefully consider the circumstances under which your institution will issue a mutual NCO, rather than a single party or unilateral NCO. Mutual orders restrict both parties from contacting one another. Therefore, contact by either party constitutes a violation. Consequently, the burden is on both parties to stay away from each other or make arrangements to avoid contact. A unilateral NCO restricts only one party from contacting another individual. Generally, it means that the individual who requested the order does not have the burden to leave a situation in order to avoid contact. For example, if a student who requested the NCO walks into the dining hall and sees the harasser, it is the burden of the harasser to remove him/herself from the situation. When determining which type of order to issue, it is also important to keep in mind that harassers can manipulate mutual orders to retaliate against victims, intentionally placing them in fear of receiving sanctions. Administrators should make an informed and deliberate decision about what type of NCO they will issue in which circumstances and apply it consistently, keeping in mind the DCL guidance to minimize the burden on the victim and the institution's legal obligation to take steps to prevent retaliation.

It is important to be aware of the facts involved in a particular case and whether the NCO is being issued as a safety measure at the time of a report of sexual assault (with or without a formal complaint) or after a finding of responsibility. For example, in some instances, institutions issue NCOs immediately upon receiving a report of sexual misconduct or at the request of a student who may feel unsafe, while in other instances institutions issue NCOs following a finding of responsibility or when a student, who was found responsible, is returning to campus following a suspension. Where a student is interested in requesting an NCO as a safety measure during an institution's judicial or investigation process, an institution should issue a unilateral NCO, because it provides an opportunity for an accused student to be heard through the campus disciplinary process. After a finding of responsibility in the disciplinary process, institutions should maintain a unilateral NCO. After a finding of non-responsibility, the NCO should be reevaluated with both parties to determine the necessity of the order.

For students who request an order as a safety measure but an investigation or disciplinary complaint will not proceed, some campuses may rely on mutual orders but should ensure that students are aware of the consequences of such orders. Issuing any kind of NCO will alert the accused student of a report, and therefore

mutual NCOs should never be an automatic step without ensuring that victims are informed that they could be sanctioned for violating mutual orders.

Common Challenges

When drafting an NCO, administrators need to consider the challenges they may face in implementation and enforcement. Administrators may not realize the impact an NCO will have on a harasser if s/he is required to leave a building or an area. For example, if your institution's dining hall is only open for 3 hours during each meal time, but the victim's and the harasser's schedules are such that they can only visit during one 45 minute time period, it may make it difficult for the harasser to access. You may consider dividing the time equally, thereby providing "safe" meal times for the victim. Alternatively, an institution requiring students to have a meal plan may consider refunding a portion of this cost to the students involved.

Another challenge may arise if both the victim's and the harasser's class schedules require them to be in the same building at the same or consecutive time slots. If applicable, an administrator can assign an entrance and exit for both parties. For example, the victim will use the east exit to the building, while the harasser will use the north exit. This also helps to prevent incidental contact from becoming consistent, intentional contact.

Enforcing Your NCO

Consistency is critical to the enforcement of an NCO. It is important that the NCO clearly identifies the office or department that will handle a report of a potential violation. Harassers and victims need to understand that a violation of an NCO is a violation of the institution's policy and will be investigated, adjudicated, and, if appropriate, sanctioned in accordance with the institution's student conduct process. Administrators often run into trouble when a violation occurs and the harasser indicates that s/he did not fully understand the restrictions placed on him/her. By explaining the parameters clearly, consistently, and in writing, administrators can prevent these misunderstandings. Another common problem we have seen is that administrators treat NCO violations differently than other incidents of misconduct at the college or university. Students are given "warnings" or told not to do it again, but no formal investigation process, finding, or sanction results. Victims often interpret this to mean that their safety is somehow unimportant or, at least, less important. It also may send the message to a harasser that his/her behavior is somehow condoned, or at the very least, without oversight.

Practice Tip: Administrators should consult with the victim to come up with creative solutions that balance the victim's safety and the harasser's access to campus programs and services. Victims often have clear ideas regarding what will make them feel safe on campus.

Action Steps

- Consider the administrators that need to be engaged in the NCO process from drafting to enforcement and arrange a meeting.

Discuss situations and case examples that have arisen at your institution in the past and consider what ways a written NCO could have helped address those issues.

Draft an NCO that reflects the policy, culture, and logistics of your institution. Make deliberate decisions about what types of contact will be included and consider ways to ensure that those policies are consistently applied. We've provided a sample NCO to help you get started.



SAMPLE NO CONTACT ORDER

****Disclaimer:** *This document is meant only as a resource.*

*This document will not protect your institution from liability and you should consult your office of general counsel if you have additional questions. ***

To: _____ Residential Assignment: _____

Cell phone number: _____ Email: _____

You are to have **NO CONTACT** with the following individual(s):

Please initial each paragraph below to indicate that you understand the terms of this notice:

_____ I understand that contact refers to **any** intentional words or actions including, but not limited to:

- Destruction or vandalism of the above-named person's property
- Verbal abuse or personal harassment both on and off-campus
- Use or threats of physical violence both on and off-campus
- Telephone calls, text messages, instant messages, emails, Facebook, Twitter, or other forms of social media.

_____ I understand that contact by a third party, who is acting on my behalf, which seeks to intimidate, harass, threaten, coerce, or place in fear the above-named individual(s) is a violation of this notice. In other words, I understand that I cannot ask friends, family members, or other students to make contact with the above-named individual in order to harass or intimidate them. Contact, as referred to in this section, includes all forms mentioned in the above paragraph.

_____ I understand that if I encounter the above-named individual(s) while on campus, it is **MY** responsibility to immediately remove myself from the situation and take means to separate.

_____ I understand that incidental contact will not be considered a violation of this order. Incidental contact may include unintentionally passing the above-named individual(s) on campus or unexpectedly seeing the above-named individual(s) in an on-campus building or dormitory. I understand that it remains my responsibility to remove myself from the situation as quickly as possible under the circumstances.

_____ I understand that this no contact order remains in effect until further notice.

_____ I understand that any violation of this order is actionable under (insert relevant conduct code section) and may result in a sanction as outlined by the [policy name].

In addition to the above, the following provisions have been put in place: [You may consider allowing space to include specific dining hall/gym hours, provisions to address class schedules, assigning bathrooms or entrances and exits, etc.] _____

Should you have any questions, please contact (insert the name of the issuing and enforcing campus bodies or offices and a contact number/email).

Print staff name

Staff Signature

Date

Student Signature

Date