

NO CONTACT ORDERS

Based on Current Title IX Regulations

June 2023



UTAH
SYSTEM OF
HIGHER
EDUCATION

20 U.S.C. § 1681

No 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.

Supportive Measures and No Contact Orders

- When the institution has actual knowledge of sexual harassment in an education program or activity in the United States then the Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. *See § 106.44(a)*
 - Supportive measures are individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. *See § 106.30*
 - Supportive measures may include...*mutual restrictions on contact* between the parties. *See § 106.30*
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No Contact Orders

- **Purpose:** a no contact order is an administrative order that is issued by the institution and restricts certain forms of intentional contact between the parties
 - **Different Names:** no contact directive, stay away order, mutual no contact order, etc.
 - **Institution Responsibility:** (1) determine scope of the order; (2) notify both parties in writing about the order; (3) explain the terms of the order to the parties; (4) modify the order if needed; (5) process order violations; (6) implement sanctions if there is a violation of the order.
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No Contact Order Generally

- **Policy and Procedures:** Follow your policy and procedures for no contact orders. Make sure you are treating both parties equitably in the process (e.g., either party may request a no contact order, etc.). The no contact order must be non-punitive, non-disciplinary, and not unreasonably burdensome to the other party.
 - **Duration of Order:** The no contact order should be limited in duration. (e.g., during the the grievance process, 4-12 months, etc.). The parties can request an extension of the order.
 - **Mutual or One Way:** Consider whether a one way no contact order may be appropriate when there is a formal complaint signed by the Title IX Coordinator, a protective order in place, a finding of responsibility, etc.
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Factors to Consider - Issuing No Contact Order

What factors should the Title IX Coordinator consider to determine whether to issue a no contact order?

No Contact Order Requirements

- **Prohibited Contact:** Outline prohibited contact between parties
 - Consider restrictions: (1) on or off campus; (2) verbal, intentional nonverbal, physical, electronic, or other forms of communication (including mailed written letter, email, social networks, phone calls, text messages, voicemails, etc.); (3) third party actions that someone takes on the party's behalf; etc.
 - The contact should not cover incidental contact. Consider having the parties leave the area if there is incidental contact.
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No Contact Order Scope

- **Scope:** If appropriate and necessary, the institution may add a location or locations to the no contact order that the specific party may not access for a limited period of time. This should be a fact-specific analysis.
 - **Note:** Any limitation should be kept as narrow as possible to reduce communication between the parties while not being punitive or disciplinary and limit the impact to education programs or activities for either party.
 - **Example:**

<u>Party</u>	<u>Location</u>	<u>Times</u>
<u>Respondent</u>	<u>Central Library – Second Floor</u>	<u>M/W/F 10:00 AM – 4:00 PM</u>
<u>Complainant</u>	<u>Central Library – Fourth Floor</u>	<u>T/TH/SAT 10:00 AM – 4:00 PM</u>

Modifying or Removing No Contact Order

What is your institution's process for modifying or removing a no contact order when there is a need or a request by a party for modification or removal?

No Contact Order – Additional Information

- Consider including in the no contact order:
 - Information about *protective orders or stalking injunctions*
 - For example: “This Order is not a court-imposed order. If the parties require judicial or other legal relief, including a protective order or stalking injunction, they must seek such relief independently from the [institution’s] administrative processes. The parties should contact law enforcement immediately if they feel they are in danger.”
 - Information that meetings for the grievance process is not a violation of the order
 - For example: “Contact made between the parties in a Title IX hearing and/or informal resolution with the [institution] or another [institution] office or department will not be considered a violation of this Order. If you need to communicate with the other party regarding a matter specific to this grievance process, please contact the Title IX Coordinator to make appropriate arrangements.”
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No Contact Order – Additional Information

- Consider including in the no contact order:
 - Information about *modifying* the order
 - For example: “If you wish to apply to remove or modify this Order, you must do so in writing to the [add individual/office]. Please be aware that the other party also has the right to ask for the removal or modification of this Order, but this determination is not subject to the same grievance process as making a determination regarding responsibility under the Title IX policy.”
 - Information that *retaliation* is prohibited
 - For example: “[Institution] policy prohibits retaliation by students and employees, regardless of whether they are parties. Retaliation includes [add language from policy] under [add policy]. A student who engages in retaliation may be subject to discipline up to and including [add policy language]. An employee who engages in retaliation may be subject to discipline up to and including [add policy language].”
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No Contact Order Notification

- **Notify:** Both parties should receive written notice of the no contact order. An institution should document notice to the parties.
 - A court held that a public university satisfied due process where it provided three notices of a no-contact order to the respondent. *See Haidak v. Univ. of Massachusetts-Amherst*, 933 F.3d 56 (1st Cir. 2019).
 - **Explain Terms of the Order to Both Parties**
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No Contact Order Violation

- **Sanctions:** The notice should include the range of possible sanctions if the order is violated. This should align with policy language.
 - Example language: A student who violates a no contact order may be subject to sanctions from probation up to and including expulsion, and the sanction may include a notation on the student's transcript. An employee who violates a no contact order may be subject to sanctions from probation up to and including termination.
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No Contact Order Violations

- Make sure your institution's policy and procedures clearly outline the process for an alleged no contact order violation.
 - Consider:
 - What policy and procedures cover student no contact orders versus employee no contact orders?
 - What office will handle the investigation (e.g., Title IX Office, Student Conduct, Human Resources, etc.)?
 - What due process protections will you offer?
 - What office will handle sanctions if there is a finding of a no contact order violation?
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Hypothetical

A complainant, who is a student at your institution, files a report with the Title IX Coordinator stating they have experienced sexual harassment from another student while at institution's volleyball game. The complainant said that they no longer feel safe attending volleyball games because the person sexually harassing them attends every game. How would you talk through the possibility of a no contact order with this student? What would be the scope of the order?

Questions?

