

Where to Start:

Drafting, Implementing, and Enforcing No Contact Orders for Victims of Gender-Based Violence on Campuses



The Victim Rights Law Center’s “Where to Start” series is a resource for administrators seeking to address gender-based violence at institutions of higher education (IHEs) across the country. In VRLC’s experience working with students as well as institutions nationally, a “one size fits all” approach to addressing it often fails to meet the needs of both students and administrators. Every campus is unique, as is each jurisdiction, 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 gender-based 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 jurisdictional laws if you have questions. Please note that throughout this series we use the term “gender-based violence” to refer to dating violence, domestic violence, sexual assault, and stalking.

A note about language... Because students often ask for No Contact Orders as a safety/supportive 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 gender-based violence is often verbal harassment, cyber stalking, or other retaliatory behaviors, we chose to use the terms “reporting party” and “accused student.”

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Many colleges and universities use institution-issued “No Contact Orders” (NCOs) to prevent contact between a student who has reported gender-based violence (“reporting party”) and the accused student. NCOs can help students feel safe on campus after experiencing gender-based violence and during the pendency of a disciplinary process. For example, students may not feel comfortable reporting gender-based violence for fear of retribution, particularly if the accused student is someone they see regularly on campus or in classes. Students may also feel intimidated or overwhelmed by going to court to seek a civil protection order, if such orders are even available in their jurisdiction.¹ In these instances, NCOs can help assure students that the institution takes their safety seriously and may facilitate an increase in reporting. While NCOs can be effective tools for campuses, administrators should not underestimate what is required to ensure that they are issued and enforced properly. This guide will provide an overview of information and considerations for crafting effective NCOs in response to gender-based violence. For the purposes of this guide, gender-based violence may encompass sexual assault, dating violence, domestic violence, and stalking. The different types of gender-based violence may require different considerations and decision-making processes based on institutional policy and federal regulations.²

Because every institution varies widely in size, culture, and structure, it takes some work up front to implement and enforce NCOs effectively. For example, on campuses with multiple dining halls or more than one gym, NCOs may be easier to draft and implement because in a case of mutual NCOs, each student can be assigned to one of these spaces. 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.



1 Note that civil protection orders have certain eligibility requirements and may not cover certain forms of gender-based violence. For example, victims of non-intimate partner sexual assault are only eligible for civil protection orders in 38 jurisdictions. This does not account for other forms of gender-based violence that may be experienced by a student on campus. In instances of stalking, for example, the availability of civil protection orders may be even more limited. For a further discussion of civil protection orders in this guide, please refer to page 3 (“Jurisdictional Law”).

2 While drafting this guide, the Department of Education released proposed Title IX regulations that would directly affect how NCOs are issued in Title IX. However, these remain subject to change and are therefore not incorporated into this guide.

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/supportive measure, which administrators or departments will issue and approve an NCO, and how a violation will be addressed. As a practical matter, campuses should consider giving the Title IX Coordinator as well as student conduct administrators authority to issue and coordinate NCOs, regardless of the underlying alleged conduct.

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 in order to make NCOs effective.

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, your Coordinated Community Response Team (CCRT) and other staff to discuss the practical requirements each group plays in the successful drafting, implementation, and enforcement of an NCO.

CIVIL PROTECTION/RESTRAINING ORDERS:

Research your jurisdiction's laws regarding civil protection and restraining orders (CPOs) to determine what options reporting parties may have. Note that such orders for victims of gender-based violence vary from jurisdiction to jurisdiction. If obtained, these orders are enforceable in a court of law, and therefore, you must ensure they are able to be complied with on your campus. For example, if the parties involved share a class and a CPO requires one student, the accused student named in the order, to maintain a certain distance from the reporting party, the institution must make accommodations for the accused student to do so. This may include recording lectures, allowing the accused student to withdraw from the course, attend the course via videoconferencing, or take the course online. 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. In discussions with reporting parties, be sure to clarify

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that seeking a CPO does not require pursuing a campus conduct process and prioritize communicating the process required to procure such orders, particularly when the safety of the reporting party is in jeopardy.³ In addition to on-campus resources, community partners and organizations play a helpful role in educating and supporting reporting parties in understanding and seeking CPOs. Cultivate strong partnerships with community partners and create a resource page for students concerned about their safety. This will help them connect to organizations that may provide accompaniment, referrals, or other important support in the process of obtaining a CPO.⁴

It is also important to consider that students may matriculate with a CPO already in effect. Orders procured in a different state or jurisdiction will still be enforceable on your campus and it is vital that the institution take proactive steps to ensure the terms of the order are able to be complied with on campus. When a student seeks an NCO in addition to an active CPO, campus administrators should take care to craft NCO terms that are consistent with the order. For instance, if a CPO requires that the accused student stay a certain distance away from the reporting party and the two participate in the same extracurricular activity, the institution should arrange for the accused student to participate in an alternate way or assess whether the accused student can participate without violating the CPO. Furthermore, when discussing the availability of NCOs with students who already have CPOs, it may be helpful to clarify that an NCO can still be useful because it gives the institution the ability to take disciplinary action in response to any violations. Importantly, students should be instructed to coordinate with campus public safety to ensure they understand who to call to report violations of CPOs and violations of NCOs, since they may be different depending on the campus.

³ Barring a subpoena, administrators responsible for the implementation and/or supervision of a campus disciplinary process, including Student Conduct Administrators, Title IX Coordinators, and Title IX investigators, should not attend or participate in CPO hearings. Doing so compromises the neutrality of administrators and inevitably subjects any campus process to allegations of bias. Moreover, for students, seeing a representative of the institution testify may impact the parties' perception of the fairness of the campus process or deter others from reporting instances of gender-based misconduct.

⁴ While a resource document will mostly reflect local organizations and partners, it may be helpful to refer to the following resources as a starting point: State and Territory Sexual Assault Coalitions: <https://www.nsvrc.org/organizations/state-and-territory-coalitions?page=0>; State and Territory Domestic Violence Coalitions: <https://ncadv.org/state-coalitions>; Overview of Protection Orders from VAWnet.org: <https://vawnet.org/sc/overview-protection-orders>; General Overview of Victim Rights by State: <https://victimlaw.org/victimlaw/>; Women's Law Website: <https://www.womenslaw.org/>; Sexual Assault Protection Order Chart (forthcoming, please email TA@victimrights.org for a copy); General Overview of Civil Protection Orders and Domestic Violence: <https://family.findlaw.com/domestic-violence/domestic-violence-orders-of-protection-and-restraining-orders.html>.

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 they 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. Consider whether and how your institution’s NCO will handle particular circumstances. While there is no single “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 reporting parties recognize that they may not be able to avoid an accused student entirely, but failing to clearly communicate this can lead to students feeling confused or unsafe when they later try to report incidental contact.

For example, if a reporting party is walking out of the same class building as the accused student is walking in, this is likely incidental contact. If the accused student returns at the same time of day several times over the course of the next week, thereby changing their route in order to “incidentally” run into the reporting party, this is intentional contact. What started as incidental can easily move into the realm of intentional if the accused student changes their habits and behaviors in an effort to cause fear or discomfort to the reporting party. These ambiguous situations can become 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. A clearer picture of the students’ schedules 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 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 reporting party through a third party. In the latter example, a third party is merely mentioning that they heard about the allegations. Explaining this difference to both parties thoroughly and through the use of examples is critical.

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.

SOCIAL MEDIA AND OTHER DIGITAL CONTACT:

Considerations: Social media is one of the primary ways students communicate, but can present challenging "proof" issues that may cause institutions to shy away from including it under their 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. As discussed above, separating incidental contact from intentional contact in the drafting and explanation of NCOs is essential for managing student and administrator expectations and maintaining the parties' confidence in the process. A possible approach to conceptualize the difference between incidental and intentional social media and digital contact is that intentional contact is when a party is purposefully selected as the recipient of the communication and then notified through whatever platform is being used. This can offer a guide for a broad range of actions but allows enough flexibility for institutions to review new technologies or specific instances. Some situations to consider:

- "tagging" the other party in a social media post
- requesting to follow or following the other party on a social media platform after the NCO is issued
- creating fake personas to contact or gain access to the other parties' account
- viewing the other parties' "stories" on Instagram or Snapchat
- viewing the other parties' "profiles" on LinkedIn (which can trigger a notification unlike public Facebook or Instagram accounts)
- "swiping right" on the other party on Tinder

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Additionally, explaining that students will be responsible for any contact made through their social media accounts gives both parties the ability to block or unfollow each other, change passwords, or notify family or friends who may be joint users. It also allows campus administrators to consistently enforce social media and digital 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 reporting party, who will want to be clear about where they are 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 an accused student, or both students in the case of a mutual NCO, to leave a situation or physical location. 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 accused student that they have the burden to leave a restaurant or club because they arrived and saw the reporting party there.

Regardless of the geographical challenges a campus presents, administrators must provide clarity at the outset to the greatest extent possible. Administrators need to make deliberate, informed decisions that contemplate the best way to keep the reporting party safe, while not infringing on the rights of the accused student and communicate those policies to both students.

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.



IMPLEMENTING YOUR NCO

MUTUAL VS. UNILATERAL

There are generally two kinds of NCOs: mutual and unilateral. Mutual NCOs 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. For example, if a reporting party arrives at a dining hall and the accused student is there, it is the reporting party's responsibility to leave or take means to separate. Unilateral NCOs restrict 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 the reporting party walks into the dining hall and sees the accused student, it is the burden of the accused student to remove themselves from the situation even though they were at the dining hall first.

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 institution's obligation to take steps to prevent retaliation. The decision between implementing a mutual NCO versus a unilateral NCO is often guided by the circumstances surrounding the reported conduct – namely, whether the NCO is being issued as a safety or supportive measure at the time of a report of gender-based violence (with or without a formal complaint) or after a finding of responsibility.

For students who request an order as a safety measure, but do not wish to pursue an investigation or disciplinary complaint, some campuses may rely on mutual orders. In these cases, administrators should ensure that students are aware of the consequences of such orders and understand that the orders may ultimately make victims of dating and domestic violence less safe. 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 reporting parties are informed that they could be sanctioned for violating mutual orders. In such situations, careful safety planning should occur before any orders are sought or issued. In addition, administrators should consider engaging a community partner or referring the student to a confidential advocate who may be able to provide support and additional safety planning before a mutual NCO is issued.

Many campuses issue mutual NCOs unless or until there is a finding of responsibility following a disciplinary process. After a finding of responsibility in the disciplinary process, however, there should not be restrictions placed on a reporting party. Some institutions choose to incorporate unilateral NCOs into a sanction in the event that the respondent will remain on or return to campus while the reporting party is still a student. Regardless of whether the NCO is modified as part of a sanction or as a safety measure, following a fair process and finding of responsibility, the order should no longer restrict the reporting party. After a finding of non-responsibility, the NCO should be reevaluated with both parties to determine the necessity of the order. Regardless of what your institutional practice is, it is important to carefully consider the circumstances under which different NCOs are issued.

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Regardless of which NCO is issued, effective written communication of the restrictions and enforcement of an IHE's NCO is the best way to ensure that students are aware of potential sanctions if there is a violation and to prevent NCOs from being used as tools for retaliation.

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 an accused student if they are 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 reporting party's and the accused student's schedules are such that they can only visit during one 45 minute time period, it may make it difficult for the accused student to access. You may consider dividing the time equally, thereby providing "safe" mealtimes for the reporting party. 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 reporting party's and the accused student'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 reporting party will use the east exit to the building, while the accused student will use the north exit. This also helps to prevent incidental contact from becoming consistent, intentional contact.

ENFORCING NCOS

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. Both parties 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 accused student indicates that they did not fully understand the restrictions placed on them. By explaining the parameters clearly, consistently, and in writing, administrators can prevent these misunderstandings.

Practice Tip: Administrators should consult with the reporting party to come up with creative solutions that balance their safety and the accused student's access to campus programs and services. Reporting parties often have clear ideas regarding what will make them feel safe on campus.

Another common trend on campuses is that administrators treat NCO violations as minor conduct infractions and lack an appreciation for the extent to which they can be retaliatory. The contact may be deemed incidental or students are given "warnings" and told not to do it again, with no formal investigation process, finding, or sanction results. Reporting parties often interpret this to mean that their safety is somehow unimportant or, at least, less important. It may also send the message that violations will not be taken seriously or trigger an inquiry into possible retaliation. Clearly demonstrating that there is oversight of NCOs is therefore crucial to ensuring their effectiveness.

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.
- Become familiar with the various civil protection orders that may be available for your students in your jurisdiction as well as local resources available to accompany them through the process of obtaining one. The following resources may be a helpful starting point in determining CPO availability and eligibility in your state or territory: State and Territory Sexual Assault Coalitions: <https://www.nsvrc.org/organizations/state-and-territory-coalitions?page=0>; State and Territory Domestic Violence Coalitions: <https://ncadv.org/state-coalitions>; Overview of Protection Orders from VAWnet.org: <https://vawnet.org/sc/overview-protection-orders>; General Overview of Victim Rights by State: <https://victimlaw.org/victimlaw/>; Women's Law Website: <https://www.womenslaw.org/>; Sexual Assault Protection Order Chart (forthcoming, please email TA@victimrights.org for a copy); General Overview of Civil Protection Orders and Domestic Violence: <https://family.findlaw.com/domestic-violence/domestic-violence-orders-of-protection-and-restraining-orders.html>.
- 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.**

Name _____

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 directed at the above-named person including, but not limited to:

- Destruction or vandalism of property;
- Verbal abuse or personal harassment both on and off-campus;
- Telephone calls, text messages, emails, or messaging through any form of social media including Snapchat, Twitter, Facebook, or LinkedIn;
- Waving or gesturing; or
- Tagging them on social media or commenting on their posts.

_____ I understand that contact by a third party, who is acting on my behalf, may be a violation of this directive. I understand that I cannot ask friends, family members, or other students to make contact with the above-named individual in order to harass, intimidate, or otherwise communicate with 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/OUR SHARED responsibility to immediately remove myself/ourselves 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. I understand that it remains my responsibility to remove myself from the situation as quickly as possible under the circumstances.

