



Campus No Contact Orders and Civil Protection Orders: An Examination



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Background

Sexual assault and intimate partner violence are prevalent in the student population of higher education campuses. Almost one in four undergraduate women experienced sexual assault or misconduct at 33 of the nation's major universities.³ 5-6% of men will experience sexual assault during college.⁴ 90% of campus sexual assaults are committed by perpetrators that the survivor knows.⁵ Compounding these facts is the low reporting rate of assaults to law enforcement.⁶

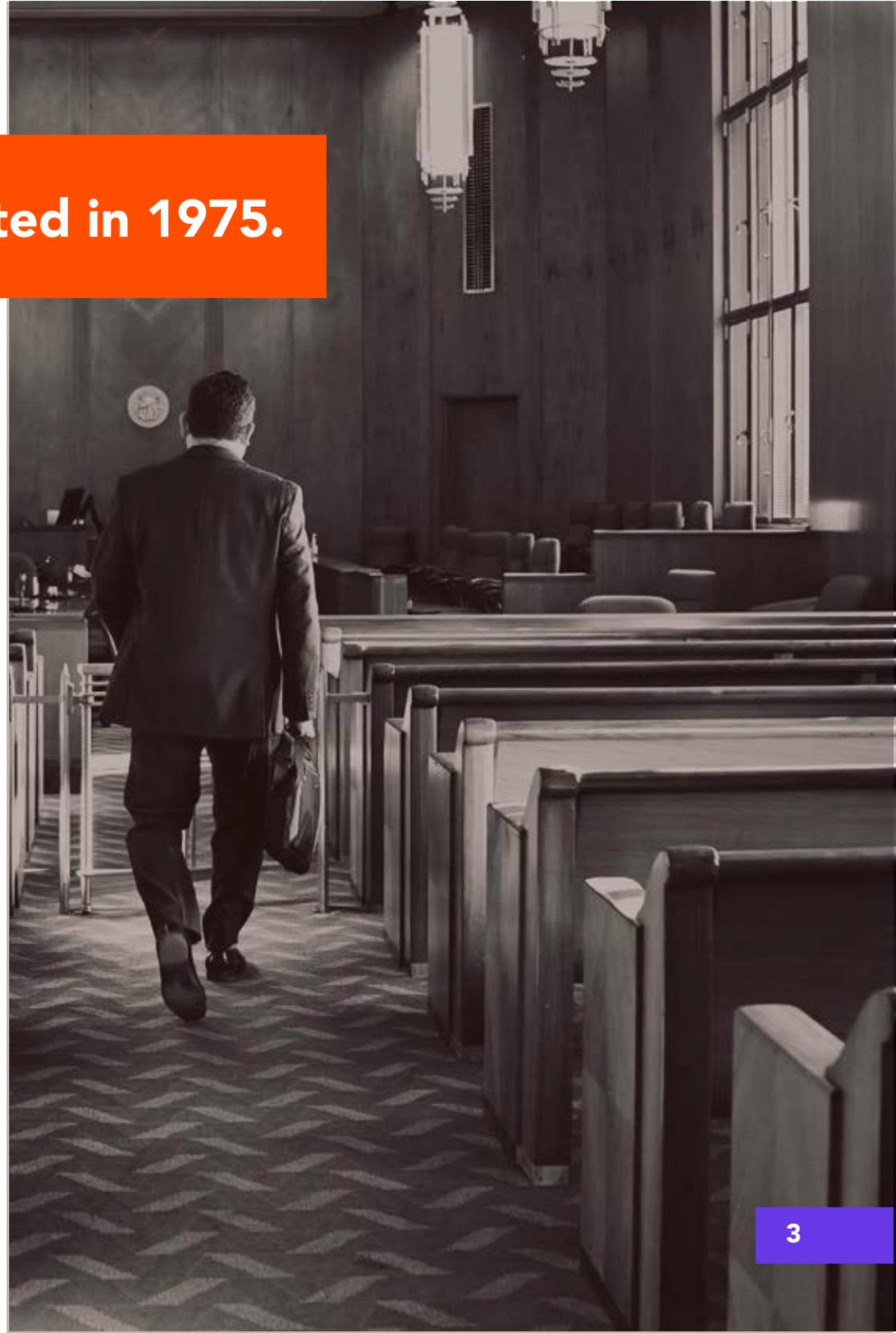
Some colleges and universities have instituted conduct policies prohibiting harassment and sexual misconduct within the student body and for staff. With low reporting rates and a protection order system that did not yet address the needs of college students, Title IX was used to institute regulations for education institutions investigating and regulating student sexual misconduct and intimate partner violence.

Protection orders issued by civil and criminal courts have long been used to prohibit contact between victims of intimate partner violence (IPV) and their abusers. These types of orders require a disclosure of abuse in the form of a petition and a court hearing. Both types of orders, as well as other types pertaining to intimate partner and dating violence, are available to students who meet the issuing jurisdiction's qualifications. From the above-mentioned statistics, the majority of students are not reporting abuse to law enforcement or seeking orders through the civil court system.



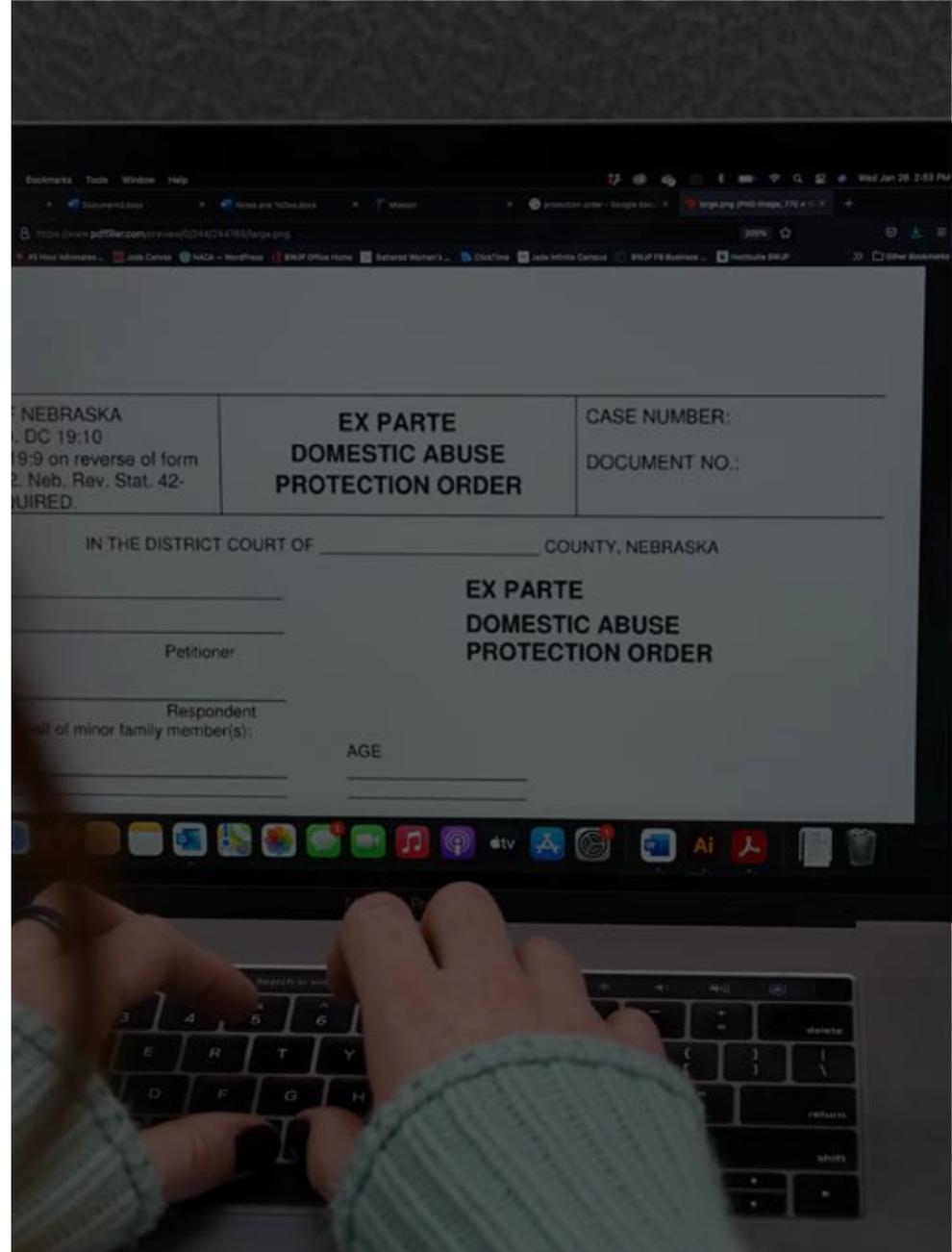
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Title IX was initially implemented in 1975. Recently, the Department of Education has engaged in formally amending the regulation; the only time in its more than 40 year history. Final updated regulations were issued on May 6, 2020. Two injunctions were filed halting the implementation of the new regulations. Changes of note included the requirement that both parties, the alleged victim and alleged perpetrator, submit to no contact provisions if not engaging in the formal adjudication process, and that the alleged perpetrator has the right to have a representative of their choice cross examine the victim during the formal adjudication process. These, of course, are not the only modifications in the updated regulation.⁷ Ultimately, the challenges failed and both times the injunctions were lifted. This new version of Title IX, with all of its changes and updates, is now implemented at institutions of higher education across the United States.



Information Gathering:

To discover more information on how these no contact orders (NCO) are issued and administered, the National Center on Protection Orders and Full Faith & Credit (NCPOFFC) and Ujima Inc., The National Center on Violence Against Women in the Black Community (Ujima Inc.) took the opportunity interview a number of Title IX administrators working in the field. It has been an ongoing project for both organizations to research policies and interview Title IX officials at several universities and colleges during the implementation of the new regulations, as well as after the injunctions were lifted. From these information gathering exercises, NCPOFFC and Ujima have created the following chart discussing the similarities and differences between civil protection orders and campus/university NCOs. The chart and research are not exhaustive. During the interviewing and information gathering process it was discovered that there is no template for implementation of this regulation and practices vary widely from institution to institution. For a limited comparison of the issuing procedures and policies of, as well as relief granted in, NCOs on campuses to those of court issued civil protection orders see below.



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Title IX: Campus No Contact Orders ^{8,9}

This chart explores the similarities and differences between no contact orders issued by institutes of higher education and protection orders from state based civil court systems. No information provided herein is to be a substitute for conducting independent research.

	Campus No Contact Orders	Civil Protection Orders ¹⁰
What is the Tribunal	Campus Administration/Campus Title IX Administrator.	Civil Court, Family Court.
Actions that give standing	Actions are dictated by school's code of conduct.	Actions are dictated by state law and can include family violence offenses like: assault, threats, controlling behavior.
Who can report or petition	Student, Faculty or Staff, or victim can report/petition	Petition only: standing is determined by the issuing jurisdiction's statutes and can include: victim, parent or next friend, employer
How is a case initiated	A report can be filed by students, faculty or staff.	A petition is filed in the court of appropriate jurisdiction.
Different types of orders available	Yes. NCO issued in response to a formal investigation restricts the behavior of the accused. Informal NCO without investigation and hearing restrict the accused and the accuser and both must agree to restrictions.	Yes. Orders can be differentiated by age/relationship of the parties or the behavior that gave rise to the need for the order.
Relationship Requirement	There is no relationship requirement, this may be interpreted loosely by school staff to allow for a wide variety of relationships and abuse/harassment situations.	Relationships necessary to obtain a protection order are dictated by state law.
Standard of Proof	Preponderance of the evidence or clear and convincing evidence.	Preponderance of the evidence is the general standard.
Due Process	The accused is notified and can agree to a NCO or can request a formal investigation if one has not been sought by the complainant.	Notice and Opportunity to be heard within the purview of the law is required.
Notice/Service of Process	There is no official method for notice or service of process. School staff does notify the accused of the accusations, ramifications of the report and next steps.	This is dictated by the laws of the issuing jurisdiction and is required by law.

The following may be available as relief:		
Physical Proximity Limit	Requires distance between the parties, but may only specify that parties cannot be in the same location.	Requires distance between the parties.
Exclusion from Certain Locations	May include common areas, housing, dining halls, etc.	May include victim's residence, place of employment, place of worship, as well as areas that the victim or other protected parties on the order may frequent.
Exclusion from Certain Activities	Yes: the school may restrict one or both students from engaging in certain school or campus activities, as well as restrict contact with the other party.	Y: may restrict the respondent's firearm use and possession, prohibit controlled substances, prohibit controlling behavior and contact, etc.
Includes Areas Outside of the Tribunal's Geographic Jurisdiction	If the school is part of a consortium of colleges or universities, restrictions may extend to those other institutions.	If violated outside of the issuing jurisdiction's geographic boundaries, the protection order shall be enforced by the jurisdiction where the violations took place.
Kinds of Contact Prohibited	Direct contact, contact through social media, texting, telephone calls, etc.	Direct contact, contact through social media, texting, telephone calls, etc.
Limits on 3 rd Party	May limit contact or harassment of victim through a third party.	May limit contact or harassment of victim through a third party.
Other Relief Available	This can vary by school and may include community service, education, written apology, etc. These are not as extensive as those available from a civil court and do not include monetary relief.	This varies by jurisdiction and can include support, child custody, stay away provisions and other relief.
Exclusion of the Perpetrator	Expulsion is not granted through a NCO, but may be utilized if the student has broken the school's code of conduct.	Tribes may exclude respondents as their their tribal code allows.
Availability of Representation	Representation is not required for the hearing process. Availability of representation differs from school to school. Some schools may train advisors and make them available to the parties.	Representation is not required. Representation may available through appropriate direct services providing legal representation or from an attorney.
Ability to Appeal Decision	Those subject to NCOs can ask for the order to be dissolved. The final determination will be made by school administrators with the input of both parties.	Yes. The respondent can appeal or seek dismissal of the order.
Enforcement:		
Judicial Enforcement	Note: judicial-like enforcement conducted by school administration; Courts of Law cannot enforce orders issued by schools.	Protection orders may be judicially enforced in the jurisdiction where the violation takes place or in the jurisdiction that issued the order.
Exclusion	I.e. expulsion. If a student repeatedly violates a NCO, and thus the student code of conduct, expulsion may be a remedy used by the school's administration.	This can be a remedy in certain orders issued by Tribal courts.

Fines	Not Applicable.	Violations may be punishable with fines.
Incarceration	Not Applicable.	If a respondent or abuser commits a criminal violation of a protection order, incarceration may be a penalty.
Enforcement through other government tribunal (full faith and credit)	Not Applicable. Campus No Contact Orders do not meet the federal definition of protection order and are not afforded full faith and credit.	Y – orders issued by courts of states, territories or tribes must be enforced by other states, territories and tribes per 18 U.S.C. 2265
Non-Judicial Enforcement	Campus NCOs are not afforded full faith and credit and do not meet the definition of protection order. As such they are not enforceable by state or local law enforcement.	Protection orders issued by states, tribes and territories are enforceable by law enforcement.
Enforceable by Other Law Enforcement	Campus NCOs are not enforceable by local law enforcement.	While law enforcement cannot enforce NCOs, it is important to note that campus based law enforcement officers can enforce protection orders.

Summary of Findings:

In interviewing a number of Title IX administrators, two similarities stood out: NCOs that were not a product of a formal investigation required both the accused and the accuser to be restricted; and the accused or the representative of the accused are permitted to cross examine the accuser in a formal adjudication process. There, the similarities end. A wide variety of schools were selected for the interview process, some schools were members of state university systems, others were private colleges with large endowments, others still were smaller institutions with limited funding. These differences resulted in a wide variety of information and described processes.



Students and faculty can report dating violence and harassment to the Title IX administrator or office. The person reporting the incident(s) does not need to be the the victim. Schools may require faculty to report intimate partner violence and harassment between students. If the behavior is reported by an uninvolved third party, the appropriate school staff will reach out to the alleged victim to offer services and gain additional information.

Victims reporting directly to the Title IX office or administrator are offered support services immediately. These services vary according to the needs of the victim and the abuse experienced. Schools may also reach out to applicable community based advocacy groups to aid the victim. Academic accommodations may be granted, as well as changes in class sections, or even switching from in-person to remote learning, if available. It is at this point the victim can decide to go forward with a formal complaint which will initiate an investigation and hearing or they may seek a NCO. If the student chooses not to file a formal complaint, they may still initiate one at a later time.



Campus NCOs restrict both the accused and the accuser. Many schools place identical restriction on both parties. While some schools may restrict only one party or provide different restrictions, this is the minority. Identical restrictions in the NCO is one of the recent additions to many institutions' Title IX related practices. Once the terms of the NCO are determined, the students then agree

abide by the restrictions in the document. If the accused is prohibited from attending English 101, the alleged victim is also prohibited from attending English 101, or they are both required to change sections if they are in the same section and other sections are available. This becomes challenging if there are not enough available classes or the appropriate accommodations cannot be made. The NCO may also prohibit contact between the two parties, social media posting about the other party, as well as third party contact or harassment. Limits on which campus facilities the parties can utilize may also be included.

The Title IX office/administrator can move forward with a formal investigation if the victim wishes or a NCO cannot be agreed upon between the parties. Here the methods of the schools diverged. Some schools, which are part of large university systems, outsourced or had designated investigators. Other schools conducted the investigation through faculty who were trained, or the investigation was conducted through the Title IX office directly. Once the investigation is concluded, the findings are then shared with the schools' administration/conduct offices, and the Title IX administrator/office moves forward with adjudication process.

If the student victim wishes to move forward with the formal investigation and adjudication then the Title IX office, or a



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school designee conducts the investigation. At some institutions this process may go forward regardless of the wishes of the victim. If the level of the incident raises concerns about an alleged perpetrator, i.e. more than one allegation, allegations by multiple victims, severity of allegation, the school may proceed with formal investigation independent of the victim's wishes. After the investigation is complete, the Title IX administrator is presented with the information. Based on information obtained in the investigation, the administrator can then recommend the case for the formal adjudication process if necessary.

If the case is moving forward in the formal adjudication process, a hearing is scheduled. The panel of decision makers for the hearing is typically made up of faculty. There was wide variation in training provided to those serving on adjudication panels. Training ranges from no training, to training provided by the Title IX office to training provided by an outside provider like State University of New York. During the hearing, evidence is presented by both sides and, in some cases, the Title IX office may be one of the parties. Both parties are allowed to be represented. Representation can be performed by any person of the parties' respective choosing. Attorneys may provide representation, but legal representation is not required. During the hearing, evidence from the investigation is offered to the panel and witnesses may provide testimony. The accused or their representative has the right to cross examine the



alleged victim.

After the hearing, the panel deliberates and decides the facts of the case. The standard of proof is preponderance of the evidence or clear and convincing evidence. If it is decided that the accused has committed an infraction, disciplinary measures may be imposed. These can include: expulsion, suspension, apology, counseling, etc. These terms are dictated by the school's administration. If the terms are not followed, it is a further violation of student conduct. These additional violations are addressed by the school's administration.

While there is an appeals process for the formal adjudication process, the more informal NCOs are not a sanction and cannot be appealed. Most of the appeals for the adjudication process are directed to the school's administration or conduct office. It is then determined if there was a misstep in the investigatory or adjudication processes.

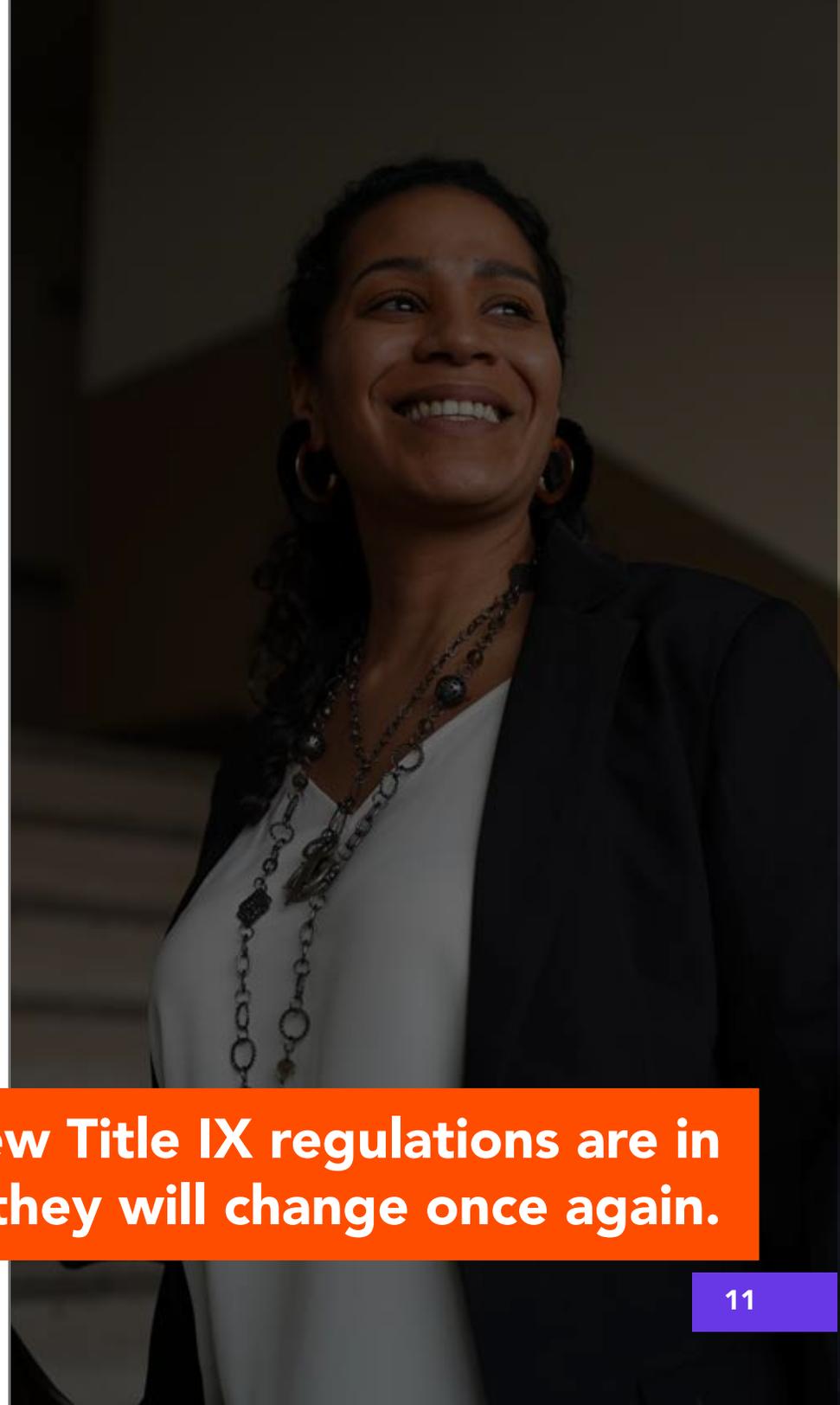
Violation of NCOs, as well as the terms of the adjudication process, are violations of many schools' codes of conduct. These violations are handled by the school's administration. Consequences may include suspension or expulsion. Very few schools utilize monetary penalties.

It is important to note that neither the terms of the adjudication process, nor NCOs, are enforceable by state law enforcement entities or state courts. While the adjudication process looks similar to the process to obtain a protection order, these documents do not meet the federal definition of protection order because they are not issued by a court in response to a complaint. Therefore these particular restrictions on behavior are not eligible for full faith and credit.

Recommendations:

At this time, while the new Title IX regulations are in place, it is unclear if they will change once again. The current process allows for an adjudication which is very “court like,” but can fail to address crimes that have occurred in the campus setting. The school adjudication process is not a replacement for civil and criminal remedies to address intimate partner violence. While civil and criminal remedies may be applied across jurisdictional boundaries, and protection orders can be enforced by campus law enforcement, NCOs and terms of adjudication cannot be enforced out of the school’s setting. Moving forward, it is recommended that Department of Justice Office on Violence Against Women work with the Department of Education on this issue and any subsequent reform of the Title IX regulations. Ensuring students get the protection that they need, those committing IPV are held accountable, and the student body is educated on IPV are profound undertakings. There is very little uniformity from institution to institution. Schools need tools to apply the regulations to allow for more uniform application, increased offender accountability and victim safety nationwide.¹¹

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Endnotes

- 1 This project was supported by Grant No. 2016-TA-AX-K052 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this presentation are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.
- 2 Amendments to Title IX regulations are imminent. Proposed amendments are currently in a period allowing for public comment. An update to this document will be forthcoming.
- 3 Cantor, D., Fisher, B., Chibnall, S., Harps, S., Townsend, R., Thomas, G., Lee, H., Kranz, V., Herbison, R., & Madden, K. (2019). Report on the AAU Climate Survey on Sexual Assault and Sexual Misconduct. Association of American Universities.
- 4 Christopher P. Krebs, Ph.D.; Christine H. Lindquist, Ph.D.; Tara D. Warner, M.A.; Bonnie S. Fisher, Ph.D.; Sandra L. Martin, Ph.D. (2007). The Campus Sexual Assault (CSA) Study (<https://www.ojp.gov/pdffiles1/nij/grants/221153.pdf>)
- 5 Fisher, Bonnie S.; Cullen, Francis T.; Turner, Michael G. (2000). The Sexual Victimization of College Women. (<https://www.ojp.gov/pdffiles1/nij/182369.pdf>)
- 6 Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Rape and Sexual Victimization Among College-Aged Females, 1995-2013 (2014). (<https://bjs.ojp.gov/content/pub/pdf/rsavcaf9513.pdf>)
- 7 For more information on the proposed regulation changes please see <https://www.ed.gov/news/press-releases/us-department-education-releases-proposed-changes-title-ix-regulations-invites-public-comment> and <https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm.pdf>
- 8 If you have questions about the information provided in this document, please contact the National Center on Protection Orders and Full Faith & Credit.
- 9 This chart does not provide information on Title IX compliance and should not be used to verify adherence to federal regulations or applicable state laws.
- 10 Federal definitions pertaining to protection orders can be found at 18 USC 2266, for information on applicable state/territorial law please contact NCPOFFC.
- 11 Currently no study has been conducted on the efficacy of campus issued no contact orders prior or subsequent to the implementation of the new Title IX regulations.