



ATIXA POSITION STATEMENT

ATIXA POSITION STATEMENT ON THE EQUITABLE USE OF NO-CONTACT ORDERS

ABOUT ATIXA

Founded in 2011, ATIXA is the nation's only membership association dedicated solely to compliance with Title IX and the support of our more than 3,000 administrator members who hold Title IX responsibilities in schools and colleges. ATIXA is the leading provider of Title IX training and certification, having certified more than 3,000 Title IX coordinators and more than 8,000 Title IX investigators since 2011. ATIXA releases position statements on matters of import to our members and the field, as authorized by the ATIXA Board of Advisors. For more information, visit www.atixa.org.

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ATIXA issues this position statement to reiterate its concern regarding what has become the routine implementation of generic mutual no-contact orders (NCOs) by colleges and universities. While campuses may see this practice as promoting equality, it is by no means equitable. As ATIXA wrote in its 2015 whitepaper, *The Challenge of Title IX Responses to Campus Relationship and Intimate Partner Violence* (which is posted and can be found [here](#)), our general advice about NCOs is to consider their value and scope on a situation-specific basis. ATIXA is reluctant to see campuses use templated NCOs in a one-size-fits-all manner instead of tailoring them to the needs of the situation. ATIXA is very opposed to campuses implementing mutual NCOs unless a victim/survivor specifically wishes to be restricted or the conflict is coming from all parties. Imposing NCOs that are automatically mutual is, simply, not a best practice and could have a retaliatory effect on the victim/survivor. Despite the scope of our Whitepaper addressing IPV, ATIXA holds this position with respect to stalking, sexual violence, sexual harassment and other behaviors covered by Title IX.

ATIXA's concerns exist on several levels. If a campus imposes restrictions on victims/survivors, it has to be willing to sanction them for violating the terms of the NCO. Not only are campuses often hesitant to sanction victims/survivors, understandably, but we fear that doing so will often be viewed as — or in fact will be — retaliatory. Why restrict someone who has engaged in no alleged wrongdoing? Depriving them of access to campus facilities and/or events by the terms of the NCO could compound the discriminatory effect of the underlying misconduct. Additionally, generic NCOs likely do not take into account the risks or needs of particular situations.

Mutual NCOs are likely so common because of a well-intentioned -- but misplaced -- desire to achieve equity. Many people perceive equity to mean equality, thus treating all the parties to an allegation equally. However, the best definition of equity is not equality, but "fairness under the circumstances," where the circumstances drive how we structure the rights and protections that

are afforded. Thus, mutual NCOs will sometimes be equitable and sometimes the mutuality will have exactly the opposite effect, depending on the circumstances of the conflict and the effect of the restrictions imposed.

For an NCO to be of optimal effectiveness, and to ensure equity, it needs to be custom-crafted to suit the situation and the individuals involved, although we recognize that this will often entail more work. It is also critical to ensure that victims/survivors fully understand all aspects and terms of the NCO and/or the reasons for *not* issuing an NCO. Administrators should also be willing to and capable of modifying the terms of the NCOs as circumstances change and modifications are warranted. Custom-crafting allows us to consider whether the NCO is to be unilateral, mutual, or multi-party; how it will be enforced; and who will be informed of the terms and restrictions, as well as providing much-needed flexibility.

As administrators custom-craft NCOs, they need to determine if the terms will limit contact, presence, proximity, distance and/or interaction, or some combination. Perhaps restrictions on interaction are appropriate for in-class provisions of an NCO, and proximity restrictions are more appropriate for out-of-class or social interactions. Administrators should consider all pertinent variables, risks, and conflict resolution mechanisms to tailor the NCO to specifics of each situation.

Other issues to consider in crafting an optimal NCO are as follows:

- If mutual, does the NCO impose equal restrictions or skewed restrictions?
 - o For example, if the responding party cannot contact the reporting party, can the reporting party contact the responding party? If so, under what circumstances? If the reporting party does contact the responding party, can the responding party reply to that contact? Are both individuals aware of these specifics?
- Will the NCO apply on campus or off, or both?
- How long will the NCO endure?
- Should it be modified after an investigation?
- Should it be durable, so that it applies after sanctions have been satisfied, or should it end once sanctions are complete?
- Should it apply for a term or time, and should that term be renewable (and how)?
- Who should be notified about the NCO? Faculty? Campus police? RAs?
- Who should be notified about possible violations of the NCO? Same as above?
- What happens when there is an inadvertent or unintentional violation of the NCO?
- What if someone is being repeatedly entrapped or enticed into violating an NCO?
- Enforcement terms and consequences should also be made clear.

This position statement has been ratified by the ATIXA Board of Advisors, June 2017.