



**SNOW
COLLEGE**

SUPPORTIVE MEASURES

TITLE

**PRESENTED BY
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DEPUTY TITLE IX COORDINATOR**

Supportive Measures

“Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment...”

“The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.”

TITLE IX COORDINATOR'S ROLE?

Title IX Coordinator must serve as the point of contact for the affected students to ensure that the supportive measures are effectively implemented so that the burden of navigating paperwork or other administrative requirements within the recipient's own system does not fall on the student receiving the supportive measures.

DOCUMENTATION

Create and retain for seven years records of:

- **Supportive measures, including what supportive measures were offered and why they were offered.**
- **No supportive measures were provided to a party (such as that the party was offered such measures but ignored or refused the offer).**
- **A supportive measure requested by a party was not provided and why it was not provided.**

Examples of Supportive Measures

Regardless of whether a formal complaint is filed, does your institution offer the parties supportive measures, which may include:

- Counseling
- Deadline extensions or other course-related adjustments
- Modifications to work or class schedules
- Campus escort services
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain campus locations
- No-contact orders

The determination of appropriate supportive measures in each situation must be based on the facts and circumstances of that situation.

Confidentiality

Does your institution keep confidential the supportive measures it provides to the parties (as described below), except as necessary to facilitate the measure provided (such as informing the other party of the imposition of a no-contact order)?

If a complainant desires supportive measures, the recipient can, and should, keep the complainant's identity confidential (including from the respondent), unless disclosing the complainant's identity is necessary to provide supportive measures for the complainant (e.g., where a no-contact order is appropriate and the respondent would need to know the identity of the complainant in order to comply with the no-contact order, or campus security is informed about the no-contact order to help enforce its terms).

Off-Campus Allegations

“We emphasize that nothing in these final regulations prevents recipients from initiating a student conduct proceeding or offering supportive measures to address sexual misconduct against a person outside the United States.”

Office of Civil Rights Questions and Answers

Question 32 : Does a school have to offer supportive measures to a complainant who has not filed a formal complaint of sexual harassment?

Answer 32: Yes. The 2020 amendments specify that the school must contact the complainant to discuss the availability of, and to offer, supportive measures, regardless of whether a formal complaint is filed. A school must also consider the complainant's wishes with regard to supportive measures.

DESIGNED TO PROVIDE EQUAL ACCESS

Does your institution offer supportive measures to both the complainant and respondent?

Supportive measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment or deter sexual harassment.

"Requiring supportive measures to be "designed" for that purpose rather than insisting that such measures actually accomplish that purpose protects recipients against unfair imposition of liability where, despite a recipient's implementation of measures intended to help a party retain equal access to education, underlying trauma from a sexual harassment incident still results in a party's inability to participate in an education program or activity."

REASONABLE BURDEN?

The supportive measure cannot punish, discipline, or unreasonably burden the respondent.

Removal from sports teams (and similar exclusions from school-related activities) also require a fact-specific analysis, but whether the burden is “unreasonable” does not depend on whether the respondent still has access to academic programs; whether a supportive measure meets the § 106.30 definition also includes analyzing whether a respondent’s access to the array of educational opportunities and benefits offered by the recipient is unreasonably burdened.

REASONABLE BURDEN?

Both parties are in the same course. What would be a reasonable burden?

Scenario A: Different section of same course available?

Transferring the respondent to a different section of that class (e.g., that meets on a different day or different time than the class section in which the complainant and respondent are enrolled) is a reasonably available supportive measure that preserves the complainant's equal access and protects the complainant's safety or deters sexual harassment, while not constituting an unreasonable burden on the respondent (because the respondent is still able to take that same class and earn the same credits toward graduation).

REASONABLE BURDEN?

Both parties are in the same course. What would be a reasonable burden?

Scenario B: No other section of the course is available?

If, on the other hand, that class in which both parties are enrolled does not have alternative sections that meet at different times, and precluding the respondent from completing that class would delay the respondent's progression toward graduation, then the school may determine that requiring the respondent to drop that class would constitute an unreasonable burden on the respondent and would not qualify as a supportive measure, although granting the complainant an approved withdrawal from that class with permission to take the class in the future, would of course constitute a permissible supportive measure for the recipient to offer the complainant.

REASONABLE BURDEN?

Both parties are members of the same sports team or student association. What would be a reasonable burden?

Where both parties are athletes and sometimes practice on the same field, consideration must be given to the scope of a no-contact order that deters sexual harassment, without unreasonably burdening the other party, with the goal of restricting contact between the parties without requiring either party to forgo educational activities. It may be unreasonably burdensome to prevent respondents from attending extra-curricular activities that a recipient offers as a result of a one-way no contact order prior to being determined responsible; similarly, it may be unreasonably burdensome to restrict a complainant from accessing campus locations in order to prevent contact with the respondent.

SUPPORTIVE MEASURES CANNOT AMOUNT TO SANCTIONS

If a recipient has listed ineligibility to play on a sports team or hold a student government position, for example, as a possible disciplinary sanction that may be imposed following a determination of responsibility, then the recipient may not take that action against a respondent without first following the § 106.45 grievance process.

Office of Civil Rights Questions and Answers

Question 33: What are the supportive measures a school must offer to complainants?

Answer 33: A school must offer supportive measures that “are designed to restore or preserve equal access to the [school’s] education program or activity.”¹⁰⁰ The 2020 amendments add that these include “measures designed to protect the safety of all parties or the [school’s] educational environment or deter sexual harassment.” A school also must consider the complainant’s wishes in determining which supportive measures to provide and may not provide supportive measures that “unreasonably burden” the other party.” A school has discretion and flexibility to determine which supportive measures are appropriate. The preamble states that a school must consider “each set of unique circumstances” to determine what individualized services would be appropriate based on the “facts and circumstances of that situation.”



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THANK YOU