

No Contact Orders, Emergency Removals, and Interim Suspensions

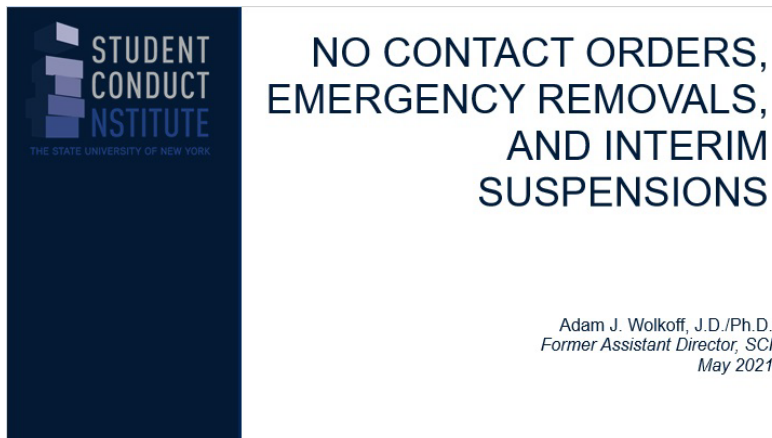
1. Introduction

1.1 SCI Welcome & legal disclaimer



Notes:

1.2 Title Slide



Notes:

1.3 Overview

OVERVIEW

- NO CONTACT ORDER
- EMERGENCY REMOVAL

Learning Objectives for this course:

1. Learn the purpose and scope of no contact orders, emergency removals, and interim suspensions.
2. Review their legal requirements.
3. Understand how they are enforced.

Notes:

2. No Contact Order

2.1 Introduction

OVERVIEW

- NO CONTACT ORDER
- EMERGENCY REMOVAL

Purpose

- Maintain the status quo
- Avoid further harassment or violence

Scope

- On campus property and programs
- Pending final determination

Types

- Mutual
- One-way

2.2 Introduction 2

OVERVIEW	Campus responsibilities under no contact order
 NO CONTACT ORDER EMERGENCY REMOVAL	• Develop appropriate order • Explain order to parties • Share order as necessary • Handle disputes about the order • Enforce the order

2.3 NC requirements I

REQUIREMENTS	Notice
 NO CONTACT ORDER EMERGENCY REMOVAL	• Parties must receive written notice of the no contact order • Parties must be given an opportunity to be heard on the order Exigent circumstances (N.Y. Ed. Law. 129-B) • Institution may impose no contact order without notice if the covered person poses risk to an individual or campus safety • Notice and opportunity to be heard must immediately follow

2.4 NC requirements II

REQUIREMENTS	Opportunity to be heard
 NO CONTACT ORDER EMERGENCY REMOVAL	• Both subject of the no contact order and the protected person may seek prompt review • No hearing formalities required. <i>Haidak v. Univ. of Mass.-Amherst</i>, 299 F.Supp.3d 242, 265 (D. Mass 2018). • Purpose: Present evidence to challenge need for and terms of order • Potential outcome: Modification to accommodate both parties' access to campus facilities

2.5 NC requirements III

REQUIREMENTS	Appropriate scope and duration
	✓ Is it limited in time? Are the parties likely to be in proximity? ✓ Can the parties still work toward their degrees and participate in athletics and programs? ✓ Can the parties prepare for the disciplinary hearing?
NO CONTACT ORDER	
EMERGENCY REMOVAL	

2.6 NC Enforcement I

ENFORCEMENT	Institutions must protect Reporting Individuals from “further harassment.”
	This requirement demands both the implementation of no contact orders and their effective enforcement. • Response cannot be “clearly unreasonable” (Title IX standard) • Accommodations must be provided if requested and reasonably available (Violence Against Women Act/Clery Act)
NO CONTACT ORDER	
EMERGENCY REMOVAL	

2.7 NC Enforcement II

ENFORCEMENT	Courts hold that not all violations of a no contact order amount to Title IX violations.
	• Sporadic encounters • Occasional glimpses • Contact not resulting in speaking or touching • Contact institution does not know about • Contact off-campus in places out of college’s jurisdiction
NO CONTACT ORDER	
EMERGENCY REMOVAL	CAUTION: This case law describes the minimal standards applicable to Title IX lawsuits, and is <u>not</u> an indication of best practice or potential OCR expectations.

2.8 NC Enforcement III

ENFORCEMENT

NO CONTACT ORDER

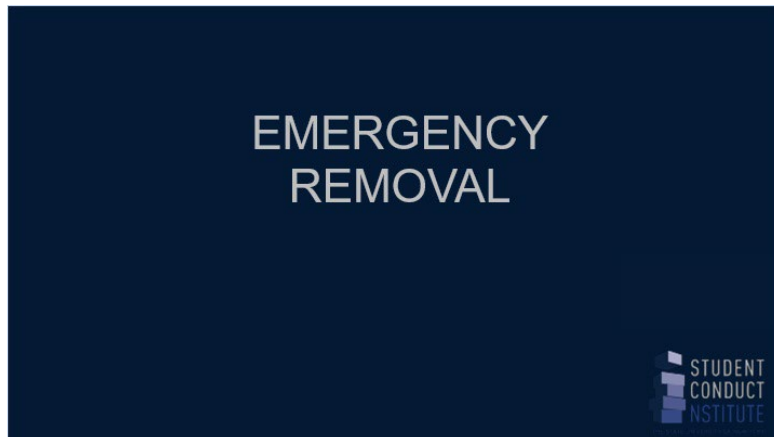
EMERGENCY REMOVAL

Institution may violate Title IX where it knows of frequent interactions and ongoing harassment and fails to stop it.

- Verbal abuse occurring twice a week
- Delay in applying no contact order, combined with failure to enforce

3. Emergency Removal

3.1 Emergency removal intro



Notes:

Joe to review

3.2 IS Overview I

OVERVIEW	Interim Suspensions are <u>Prohibited</u> under Title IX Final Rules for Student-Respondents
 NO CONTACT ORDER	Emergency Removals are Permitted
 EMERGENCY REMOVAL	• Not considered a “disciplinary sanction”
	Purpose
	• Protect physical safety and health of complainant and campus community
	Scope
	• Campus property and programs • Indeterminate length (depends on the danger)

3.3 IS Overview II

OVERVIEW	Scope of the Emergency Removal
 NO CONTACT ORDER	• Must arise from conduct that constitute “sexual harassment” as defined under Section 106.30 of the Final Rules.
 EMERGENCY REMOVAL	• Institution may consider the substance of that alleged sexual harassment and any post-incident behavior manifesting a threat
	Non-Title IX Allegations
	• Dangerous behavior in non-Title IX setting (gun brought to campus) can be handled through different process in Code of Conduct, including through a traditional interim suspension

3.4 IS Requirements I

REQUIREMENTS	Five-Step Process for Emergency Removal
 NO CONTACT ORDER	Step One: Individualized Risk Assessment
 EMERGENCY REMOVAL	• Existing protocols for interim suspensions may be applicable; review for consistency
	• No specific rules regarding • what type or volume of evidence is needed to support the risk assessment • who must do the assessment • how quickly it must be done
	• Review for Conflicts of interest

3.5 IS Requirements II

REQUIREMENTS	Five-Step Process for Emergency Removal
NO CONTACT ORDER	
EMERGENCY REMOVAL	Step Two: Apply Section 106.44(c) Criteria
	- Is the threat “immediate”? - Consider: propensity, opportunity, and ability - Is the threat to a person’s “physical” health or safety? - Does the threat arise from “sexual harassment”? - May include threats of self-harm arising from the allegations

3.6 IS Requirements III

REQUIREMENTS	Five-Step Process for Emergency Removal
NO CONTACT ORDER	
EMERGENCY REMOVAL	Step Three: Apply Disability Law if appropriate
	Step Four: Consider Alternatives
	- Has the immediate danger passed? - Would a no-contact order achieve the same goal? - Would other supportive measures be effective?

3.7 IS Requirements IV

REQUIREMENTS	Five-Step Process for Emergency Removal
NO CONTACT ORDER	
EMERGENCY REMOVAL	Step Five: Process for Review
	Consider due process already established in case law for interim suspensions
	- Both covered party and protected party may seek prompt review, reasonable under the circumstances - No hearing formalities required, but must be “something more” than an “informal interview.” <i>Haidak v. Univ. of Mass.-Amherst</i> (1st Cir. 2019)

3.8 IS Enforcement I

ENFORCEMENT	Recall: Title IX requires institutions to provide effective measures to protect Reporting Individuals from "further harassment"
NO CONTACT ORDER	
EMERGENCY REMOVAL	Institutions have flexibility in deciding whether to grant the emergency removal. A good faith decision not to impose one is unlikely to trigger Title IX liability.
	But if the institution identifies a continuing threat and imposes the removal, its failure to enforce the removal could amount to a Title IX violation.

3.9 IS Enforcement II

SUMMARY	
NO CONTACT ORDER	
EMERGENCY REMOVAL	• Restrictions of contact are limited to campus, for the narrow purposes of avoiding the creation of further hostility and maintaining the status quo pending the outcome of the process • Interim suspensions should never be issued without a finding of a continuing threat to campus health and safety; this requirement is now mandatory under the Title IX Final Rule for Title IX matters • Procedures must be available for all parties to challenge the scope of these restrictions

Notes:

3.10 Next Steps

PLEASE CONTINUE TO NEXT SLIDE
TO COMPLETE THIS MODULE 

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please fill out the form at this link:
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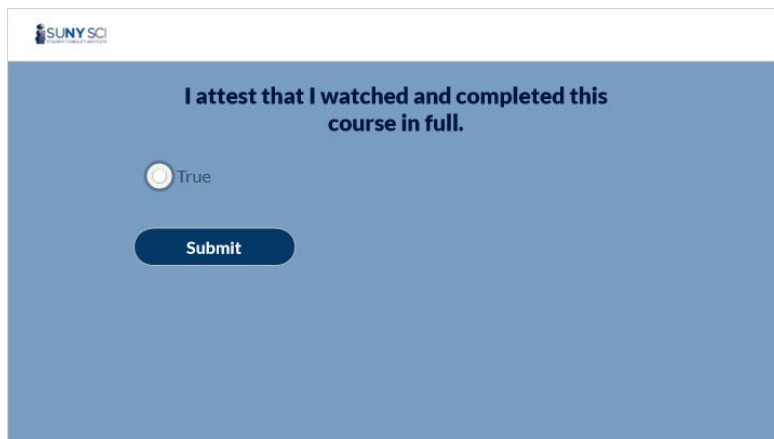
For written materials and related case law on the
subjects discussed in this module, you can access the
casebook from your online platform landing page.

Notes:

4. Exit Questions

4.1 Attest

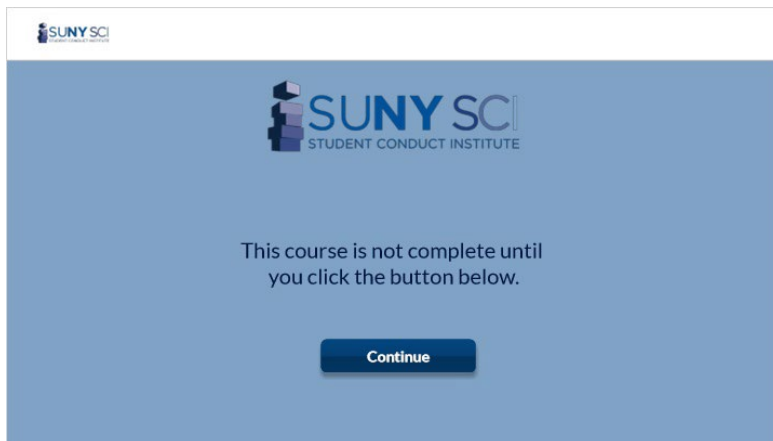
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Correct	Choice
X	True

4.2 Results Slide

(Results Slide, 0 points, 1 attempt permitted)



Results for

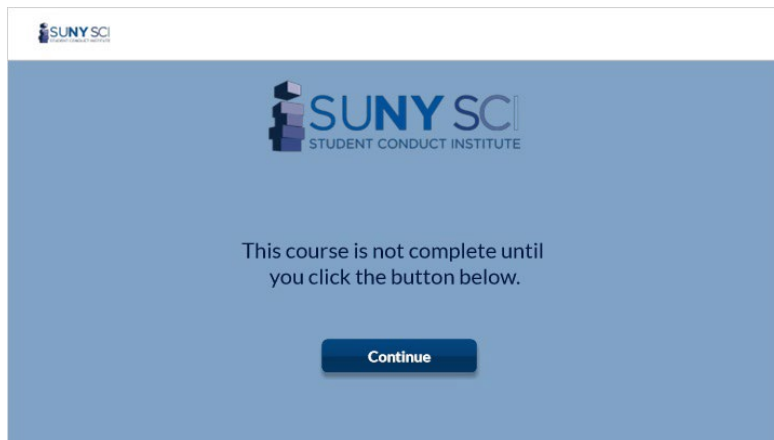
4.1 Attest

Result slide properties

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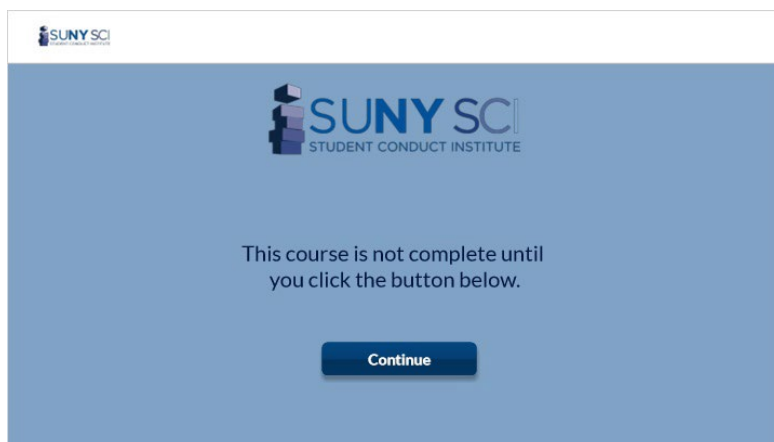
Passing Score

Success (Slide Layer)



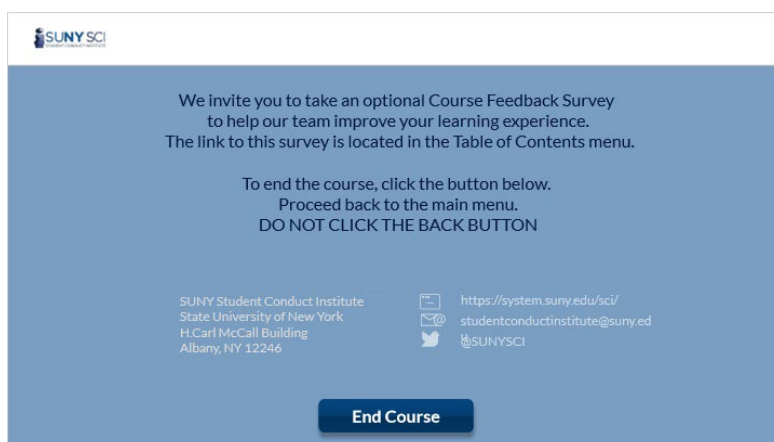
A slide layer with a blue background. At the top left is the SUNY SCI logo. In the center is the SUNY SCI logo with the text "STUDENT CONDUCT INSTITUTE" below it. Below the logo is the text "This course is not complete until you click the button below." At the bottom center is a dark blue button with the word "Continue" in white.

Failure (Slide Layer)



A slide layer with a blue background. At the top left is the SUNY SCI logo. In the center is the SUNY SCI logo with the text "STUDENT CONDUCT INSTITUTE" below it. Below the logo is the text "This course is not complete until you click the button below." At the bottom center is a dark blue button with the word "Continue" in white.

4.3 End Course



A slide layer with a blue background. At the top left is the SUNY SCI logo. In the center is the text "We invite you to take an optional Course Feedback Survey to help our team improve your learning experience. The link to this survey is located in the Table of Contents menu." Below this is the text "To end the course, click the button below. Proceed back to the main menu. DO NOT CLICK THE BACK BUTTON". At the bottom left is the text "SUNY Student Conduct Institute State University of New York H.Carl McCall Building Albany, NY 12246". At the bottom center are icons for a website, email, and Twitter. To the right of these icons is the text "https://system.suny.edu/sci/ studentconductinstitute@suny.edu @SUNYSCI". At the bottom center is a dark blue button with the text "End Course" in white.