



March 31, 2020

Dear University Presidents and Title IX Administrators,

We are in the midst of a national emergency, and meeting the needs of survivors of sexual assault and other forms of sexual harassment must be part of educational institutions' emergency response. We therefore write to urge you to proceed with prompt and equitable sexual misconduct investigations and hearings during this period of remote learning. As schools move online to stop the spread of COVID-19, we have heard from survivors across the country who shared that their cases are stuck in limbo. Some Title IX Coordinators have remained silent on how the cases will be impacted; worse yet, others have delayed the cases indefinitely. As survivors and survivor advocates, we know that unnecessary delays in sexual misconduct cases can compound survivors' trauma, lead them to drop cases they would otherwise pursue, and push them out of school, all of which inhibit their access to education. We know that this moment is unprecedented, but that is not a justification for putting the civil rights of students on hold. Schools must continue to uphold survivors' right to an education free from discrimination, not put those rights on the backburner.

To be clear, schools' logistical obstacles are not a sufficient justification for forcing students to forgo their right to a prompt and equitable process to address and redress sexual violence and other forms of sexual harassment. Meaningfully enforcing civil rights is not an obligation that dissipates in the face of institutional hardships—even during these unprecedented times. Student survivors rely on sexual misconduct proceedings for the restoration of their right to safely access education and the prevention of future harms. At the very least, when schools deem timeline changes necessary, students are entitled to prompt and clear communication of those delays in the enforcement of their rights — and a thorough explanation of their necessity.

Some who advocate for respondents have declared that moving forward with sexual misconduct proceedings during remote learning would violate the rights of respondents. This blanket statement rings hollow. Both complainants and respondents have a vested interest in the prompt and equitable resolution of sexual misconduct allegations, and these interests are not automatically displaced by circumstances of remote learning. The stakes for both complainants and respondents in these cases are not insubstantial, and schools must continue to honor their obligation to effectively and efficiently resolve allegations of sexual misconduct through this period of remote learning.

To ensure that schools respect the rights of all parties involved in sexual misconduct cases during this period of remote learning, we advise schools to:

1. **Hold hearings and conduct investigations as scheduled through remote channels.** In-person hearings are not legally required for student discipline proceedings; video hearings provide sufficient opportunity for face-to-face contact and real time response between the fact finder and the parties as in-person proceedings.
2. **Maintain enforcement of no-contact and stay away orders.** Despite parties being off campus, parties may still live in proximity to each other and regardless the threat of cyber harassment still lingers. Any no-contact or stay away order should remain fully enforceable. While the consequences for the respondent might look different, the diligence with which the school undertakes its investigations should not.
3. **Provide survivors with all academic accommodations to which they are entitled,** regardless of whether a formal complaint has been filed.
4. **Continue to offer free counseling services as necessary for the complainant,** shifting to tele-mental health services to ensure continuity of care. As feasible, schools should also continue to assist survivors with identifying affordable, accessible health care in their new geographic locations to remedy any health issues caused by their experiences of violence.

As these are unprecedented times, we understand there may be times when delays of investigations and determinations of responsibility are indeed appropriate. These times should be a case-by-case factual inquiry rather than a blanket policy and should be limited to situations such as when:

1. A school is entirely incapable of proceeding with the original case timeline because of limited institutional resources;
2. Either party has a disability that jeopardizes the fairness or accessibility of video conferencing;
3. Either party has limited access to internet or technological resources that the school cannot remedy; or
4. Either party is ill or contending with an active personal or family emergency.

If a school determines it must delay a particular proceeding, it should communicate a new investigation or hearing timeline — which should be as timely as practicable — to both the complainant and respondent in writing. In these determinations and communications, schools should consider and explain the possible consequences of such delays, including the prospect that either party might graduate before the matter is concluded.

We are concerned to see that some schools, at the request of respondents and their advocates, have delayed sexual misconduct cases indefinitely or unnecessarily. Schools, especially in this moment, need to remember that they have important legal obligations to complainants. It is

imperative that schools move forward, whenever possible, with students' sexual misconduct cases. Where they are unable to proceed as usual, schools owe complainants and respondents

clear notice, a legitimate justification, a new proposed timeline, and a thorough explanation of the possible impacts such delays may have on a given case.

We sympathize with the hardships schools face in these uncertain times, but an institutional commitment to students' civil rights must not buckle in the face of these challenges. If you have further questions or concerns, please email Know Your IX Manager, Sage Carson, at sage@knowyourix.org.

Signed,

Know Your IX
American Association of University Women
Equal Rights Advocates
National Women's Law Center
Public Justice
URGE: Unite for Reproductive and Gender Equity