# The Intersection of Title IX and BIT

Bates College – June 23, 2020

# YOUR FACULTY



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# AGENDA

- Defining Terms
  - Behavioral Intervention Teams
  - Title IX
  - FERPA
- Overlap of Behavioral Intervention Teams and Title IX
  - Cases that intersect
  - Defining roles for BIT and Title IX Coordinator (and team)
    - Effective collaboration
    - Leveraging the expertise of both offices
  - Communication and Sharing Information
- Emergency Removal
- Violence Risk Assessment
- Other Assessment Tools

## Title IX

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

*20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)*
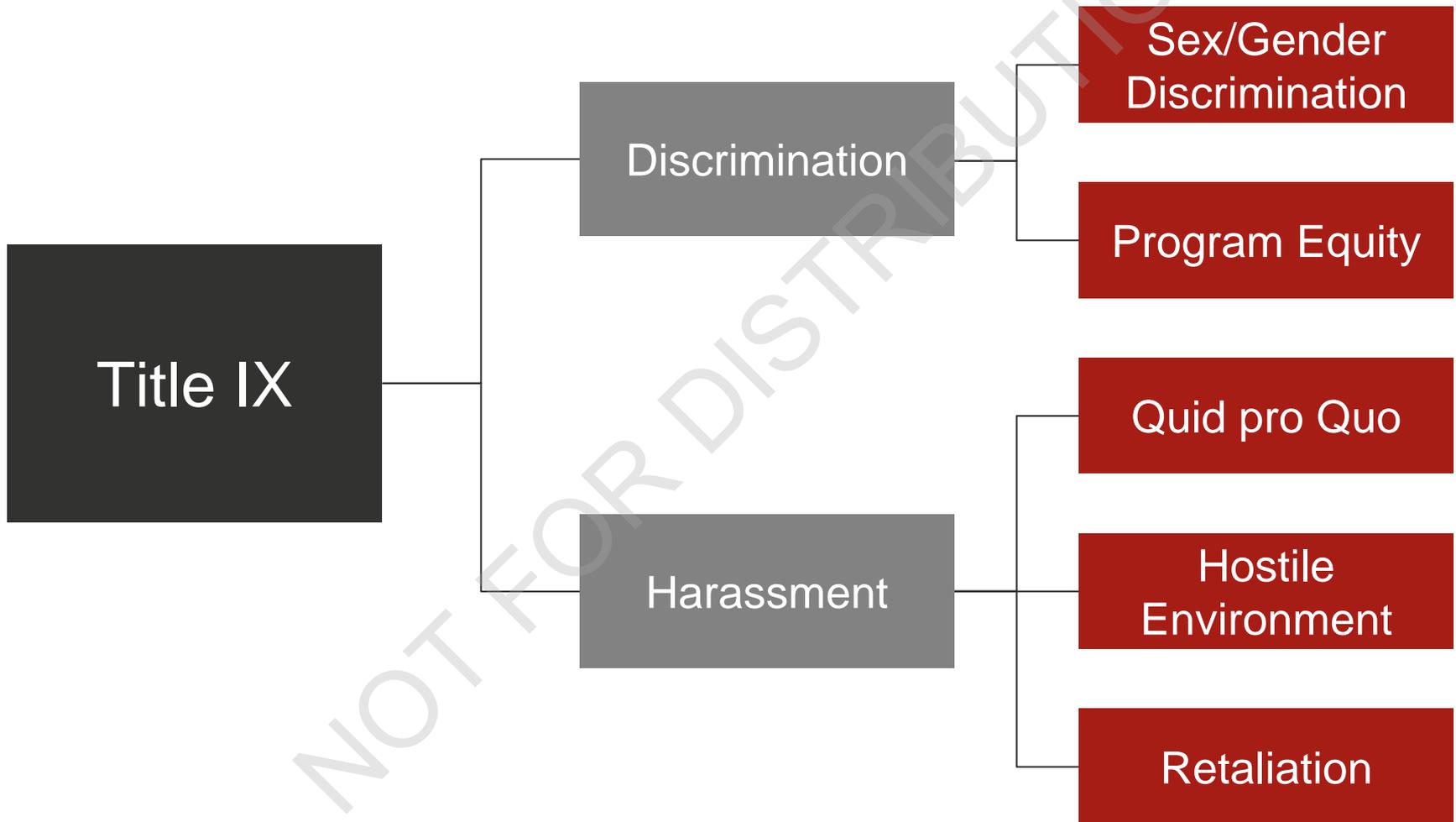
# Title IX

# DEFINING TERMS:
# TITLE IX COORDINATOR (TEAM)

- Prevention and remediation of:
  - Gender Discrimination
  - Sexual Harassment
  - Sexual Assault
  - Stalking
  - Intimate Partner/Relationship Violence
  - Bullying and Cyberbullying
  - Retaliation
- Assurance of compliance with requirement to stop, prevent, remedy.
- Assurance of compliance with final sanctions.

# KEY ELEMENTS FROM 2020 TITLE IX REGS

- Effective Date: August 14, 2020.
- A "report" of sexual harassment triggers obligation to provide supportive/interim measures.
- Very specific definition of "sexual harassment" that encompasses:
  - Sexual assault; sexual harassment that is severe, pervasive, and objectively offensive; stalking; domestic violence; dating violence; and quid pro quo employee-on-student
- Investigate only with a formal, written complaint (submitted by Complainant or occasionally by the TIXC). BIT members still "responsible employees."
- Live hearings required for higher education institutions, including cross-examination by parties' advisors.

- Interim/supportive measures available to both Complainant and Respondent. Must be:
  - Non-punitive
  - Individualized services/assessment
  - Designed to restore or preserve access
  - Must not unreasonably burden the other party
  - Examples: counseling, extensions of deadlines, other academic adjustments, modifications of work or class schedules, mutual NCOs, changes in work/housing, leaves of absence, increased security
- "Emergency removal" available but only under limited circumstances and with sufficient due process protections.
- Informal resolutions may be available if desired by both parties (and with specific procedural elements).

## BIT

"Behavioral Intervention Teams are small groups of school officials who meet regularly to collect and review concerning information about at risk community members and develop intervention plans to assist them"

*- NaBITA Advisory Board, 2018*

## BIT: Preventative or Threat Response?

BITs are prevention-oriented with threat assessment as a component of their overall work. This means BITs must train their communities to report concerns that might previously have been ignored, explained away, or described as "weird or odd."

Gather Data → Rubric/Analysis → Intervention
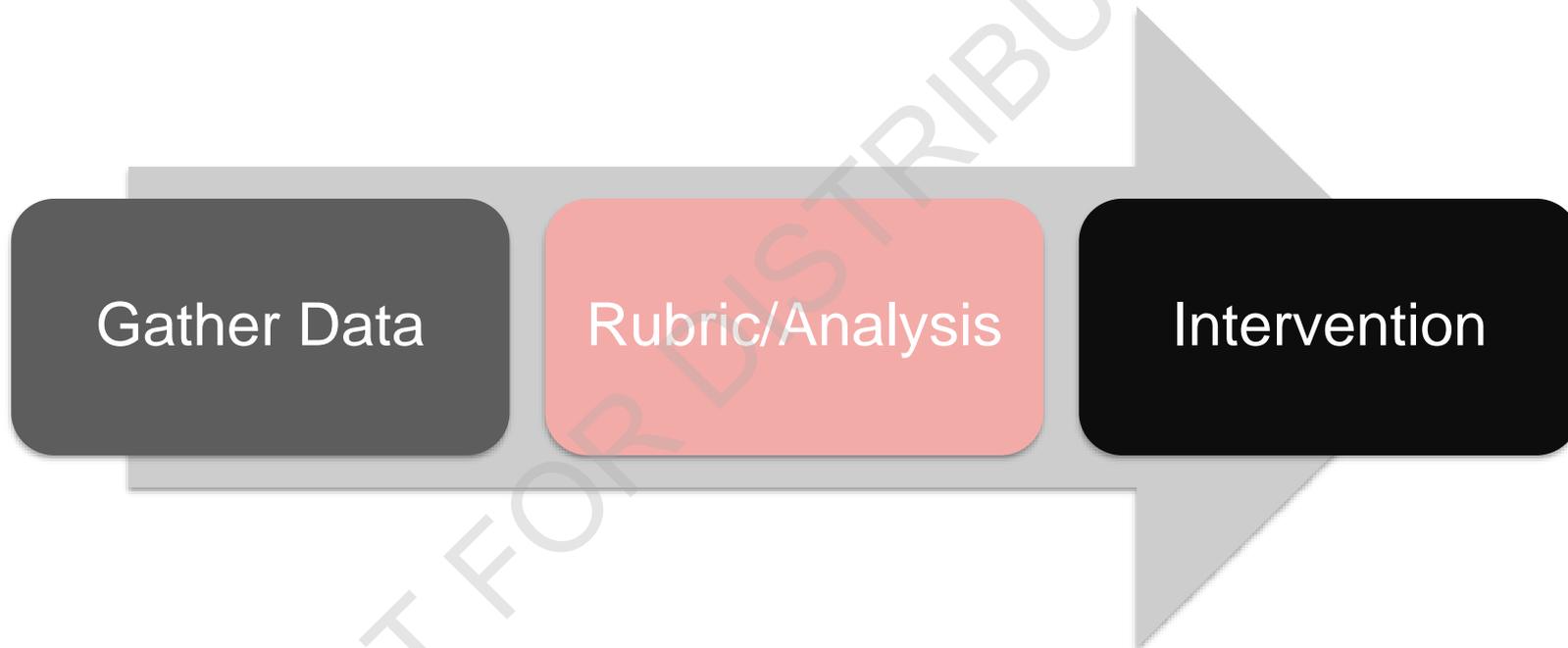
# NaBITA Risk Rubric

## D-SCALE
### Life Stress and Emotional Health

## OVERALL SUMMARY

## E-SCALE
### Hostility and Violence to Others

### DECOMPENSATING

▲ Behavior is severely disruptive, directly impacts others, and is actively dangerous. This may include life-threatening, self-injurious behaviors such as:
  ▲ Suicidal ideations or attempts, an expressed lethal plan, and/or hospitalization.
  ▲ Extreme self-injury, life-threatening disordered eating, repeated DUIs
  ▲ Repeated acute alcohol intoxication with medical or law enforcement involvement, chronic substance abuse
  ▲ Profoundly disturbed, detached view of reality and at risk of grievous injury or death and/or inability to care for themselves (self-care/protection/judgment)
  ▲ Actual affective, impulsive violence or serious threats of violence such as:
    ▲ Repeated, severe attacks while intoxicated; brandishing a weapon
    ▲ Making threats that are concrete, consistent, and plausible
    ▲ Impulsive stalking behaviors that present a physical danger

### DETERIORATING

■ Destructive actions, screaming or aggressive/harassing communications, rapid/odd speech, extreme isolation, stark decrease in self-care
  ■ Responding to voices, extremely odd dress, high risk substance abuse; troubling thoughts with paranoid/delusional themes; increasingly medically dangerous binging/purging
  ■ Suicidal thoughts that are not lethal/imminent or non-life threatening self-injury
■ Threats of affective, impulsive, poorly planned, and/or economically driven violence
  ■ Vague but direct threats or specific but indirect threat; explosive language
  ■ Stalking behaviors that do not harm, but are disruptive and concerning

### DISTRESSED

● Distressed individuals engage in behavior that concerns others, and have an impaired ability to manage their emotions and actions. Possible presence of stressors such as:
  ● Managing chronic mental illness, mild substance abuse/misuse, disordered eating
  ● Situational stressors that cause disruption in mood, social, or academic areas
  ● Difficulty coping/adapting to stressors/trauma; behavior may subside when stressor is removed, or trauma is addressed/processed
● If a threat is present, the threat is vague, indirect, implausible, and lacks detail or focus

### DEVELOPING

◆ Experiencing situational stressors but demonstrating appropriate coping skills
◆ Often first contact or referral to the BIT/CARE team, etc.
◆ Behavior is appropriate given the circumstances and context
◆ No threat made or present

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### CRITICAL

**4**

In this stage, there is a serious risk of suicide, life-threatening self-injury, dangerous risk taking (e.g. driving a motorcycle at top speed at night with the lights off) and/or inability to care for oneself. They may display racing thoughts, high risk substance dependence, intense anger, and/or perceived unfair treatment or grievance that has a major impact on the students' academic, social, and peer interactions. The individual has clear target for their threats and ultimatums, access to lethal means, and an attack plan to punish those they see as responsible for perceived wrongs. Without immediate intervention (such as law enforcement or psychiatric hospitalization), it is likely violence will occur. There may be leakage about the attack plan (social media posts that say "I'm going to be the next school shooter" or telling a friend to avoid coming to campus on a particular day). There may be stalking behavior and escalating predatory actions prior to violence such as intimidation, telegraphing, and "test-runs" such as causing a disruption to better understand reaction time of emergency response.

### ELEVATED

**3**

Behavior at the elevated stage is increasingly disruptive (with multiple incidents) and involves multiple offices such as student conduct, law enforcement, and counseling. The individual may engage in suicidal talk, self-injury, substance intoxication. Threats of violence and ultimatums may be vague but direct or specific but indirect. A fixation and focus on a target often emerge (person, place, or system) and the individual continues to attack the target's self-esteem, public image, and/or access to safety and support. Others may feel threatened around this individual, but any threat lacks depth, follow-through, or a narrowing against an individual, office, or community. More serious social, mental health, academic, and adjustment concerns occur, and the individual is in need of more timely support and resources to avoid further escalation. Conditional ultimatums such as "do this or else" may be made to instructors, peers, faculty, and staff.

### MODERATE

**2**

Prior to this stage, conflict with others has been fairly limited. The hallmark of moderate is an increase in conflict with others through aggressive speech, actions, and mannerisms. They may become frustrated and engage in non-verbal behaviors or begin to post things on social media, put up posters around campus, or storm away from conversations. Stress, illness, lack of friends, and support are now becoming an increasing concern. The individual may be tearful, sad, hopeless, anxious, or frustrated. This may be caused by difficulty adjusting, dating stress, failure in class assignments, and/or increasing social isolation. If there is a threat or physical violence such as carelessly pushing someone out of their way while storming off, the violence is typically limited and driven by adrenaline and impulsiveness, rather than any deeper plan to hurt others.

### MILD

**0/1**

The individual here may be struggling and not doing well. The impact of their difficulty is limited around others, with the occasional report being made to the BIT/CARE team out of an abundance of caution and concern rather than any direct behavior or threats. They may be having trouble fitting in, adjusting to college, making friends, or may rub people the wrong way. They alienate others with their thoughts or mannerisms, and there may be minor bullying and conflict. With support and resources, it is likely the individual will be successful adapting and overcoming obstacles. Without support, it is possible they will continue to escalate on the rubric.

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### EMERGENCE OF VIOLENCE

▲ Behavior is moving towards a plan of targeted violence, sense of hopelessness, and/or desperation in the attack plan; locked into an all or nothing mentality
▲ Increasing use of military and tactical language; acquisition of costume for attack
▲ Clear fixation and focus on an individual target or group; feels justified in actions
▲ Attack plan is credible, repeated, and specific; may be shared, may be hidden
▲ Increased research on target and attack plan, employing counter-surveillance measures, access to lethal means; there is a sense of imminence to the plan
▲ Leakage of attack plan on social media or telling friends and others to avoid locations

### ELABORATION OF THREAT

■ Fixation and focus on a singular individual, group, or department; depersonalization of target, intimidating target to lessen their ability to advocate for safety
■ Seeking others to support and empower future threatening action, may find extremists looking to exploit vulnerability; encouraging violence
■ Threats and ultimatums may be vague or direct and are motivated by a hardened viewpoint; potential leakage around what should happen to fix grievances and injustices
■ There is rarely physical violence here, but rather an escalation in the dangerousness and lethality in the threats; they are more specific, targeted, and repeated

### ESCALATING BEHAVIORS

● Driven by hardened thoughts or a grievance concerning past wrongs or perceived past wrongs; increasingly adopts a singular, limited perspective
● When frustrated, storms off, disengaged, may create signs or troll on social media
● Argues with others with intent to embarrass, shame, or shut down
● Physical violence, if present, is impulsive, non-lethal, and brief; may seem similar to affective violence, but driven here by a hardened perspective rather than mental health and/or environmental stress

### EMPOWERING THOUGHTS

◆ Passionate and hardened thoughts; typically related to religion, politics, academic status, money/power, social justice, or relationships
◆ Rejection of alternative perspectives, critical thinking, empathy, or perspective-taking
◆ Narrowing on consumption of news, social media, or friendships; seeking only those who share the same perspective
◆ No threats of violence

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TRAJECTORY?

BASELINE

TRAJECTORY?

1. Direct threat to person/place/system.
2. Has tools, plans, weapons, schematics.
3. Fantasy rehearsal.
4. Action plan or timeframe to attack.
5. Fixated/focused on target.
6. Grudges/injustice collector.
7. Pattern of negative writing/art.
8. Leakage/warning of potential attack.
9. Suicidal thoughts with plan.
10. Persecution/victim mindset.
11. Last act behaviors.
12. Confused thoughts/hallucinations.
13. Hardened point of view.
14. No options/hopeless/desperate.
15. Drawn or pulled to action.
16. Recent break-up or stalking.
17. Defensive/overly casual interview.
18. Little remorse or bravado.

19. Weapons access or training.
20. Glorifies/studies violence.
21. Disingenuous/externalize blame.
22. Acts superior/lacks empathy.
23. History of impulsive risk-taking.
24. History of conflict (authority/work).
25. Extreme poor frustration tolerance.
26. Trouble connecting/lacks trust.
27. Substance abuse/acting out.
28. Serious mental health Issues.
29. If serious MH issue, not in care.
30. Objectification of others.
31. Sense of being owed.
32. Oppositional thoughts/behaviors.
33. Evaporating social inhibitors.
34. Overwhelmed from loss (e.g., job or class).
35. Drastic behavior change.

LOOKING GLASS

**For Title IX Coordinators and Investigators**

atIXa

# Assessment of Written Word

- Escalating elements

- Mitigating elements

- Scoring aligns with RR

- Suggested Interventions

## Looking Glass Overview: Title IX

LOOKING GLASS

### Escalating Elements

| Element | Description |
|---|---|
| **Author Qualities** | |
| 1. Suicidal Content | Details indicate direct or indirect suicidal ideations. |
| 2. Isolation and Hopelessness | Elements of isolation, loneliness, marginalization from societal group. |
| 3. Fame/Meaning Seeking | A tone of seeking larger status as an all-powerful figure, a martyr, or someone who is more knowledgeable than the rest of the population. |
| 4. Injustice/Grievance Collecting | Righting a wrong, striving for power; the writer gives evidence of being wronged by others. |
| **Tone Qualities** | |
| 5. Hardened, Black/White Thinking | A hardened quality to the writing that reflects an either/or way of thinking; including potentially about relationships; rejects other's ideas or ideological positions in an emotional manner. |
| 6. Graphic and Violent Descriptions | Graphic and shocking language describes a potential attack or the traits of their targets; could include vivid adjectives, threatening tones, torture or descriptions of blood and gore. |
| **Content Qualities** | |
| 7. Target Detail | Narrowing fixation and focus to a specific individual or group target; often an overall negative tone in references to the target (e.g. intelligence, appearance, gender, religion). |
| 8. Weapon Detail | Includes details of brandishing of weapons on social media and/or a specific discussion of what weapons might be used in an attack. |
| 9. Threat Plan Detail | Includes a threat plan with the time/ date of the attack, lists of items to acquire (such as bulletproof vests and high capacity mags), or schematics. |
| 10. Previous Attack Detail | Includes references to previous similar attacks done by others; could also include comments about certain dates (i.e., Hitler's birthday) or references to studying past attacks. References to prior attacks on a partner in a relationship (e.g. "You remember the beating she took last time she tried to leave?"). |

### Mitigating Elements

| Element | Description |
|---|---|
| **Author Qualities** | |
| 1. Trolling | The purpose is to cause distress and to troll others to react. |
| 2. Developmental Delay | The author is developmentally or mentally young, may have a processing/expressive disorder or was transitioning to a new school or location; has a juvenile, poorly thought out quality. |
| 3. Tangential, Rambling or Incoherent | Influenced by a serious mental illness that disturbs thought, logic, organization. |
| 4. International, Non-Native Language | The author does not have a mastery of the English language and may have made comments that, when taken out of context, sound more substantive in terms of threats. |
| 5. Creative Author | Expresses a desire to be an author, artist or musician; when taken out of an artistic process, has a more concerning tone and quality. |
| **Content Qualities** | |
| 6. Writing for Class | Part of a class or group assignment; when the content is seen from this context, it may still be disturbing, but lessens the level of concern. |
| 7. Therapeutic Journal | Part of a larger therapeutic process (either with a professional or alone); its purpose is to help better handle frustration, impulse control and concerning thoughts. |
| 8. Political or Opinion | Designed, in a non-violent way, to bring about change through debate and rhetoric; may be satire or the speech common on radio talk shows. |
| 9. Retaliatory Expression | Designed to create a reaction from the person receiving it; does not contain ultimatums; written for the author to save face or regain lost reputation. |
| 10. Affective/Reactive | Occurs in reaction to an emotional frustration or event; if there are threats in the sample, they are vague, disorganized and transient in nature. |

## Family Educational Rights and Privacy Act (FERPA)

*20 U.S.C. § 1232g; 34 CFR Part 99*

- FERPA is a federal law that protects the privacy of students' educational records and applies to all schools that receive funds under the U.S. Dept of Education.

- FERPA allows schools to disclose students' educational records without consent to other school officials with a legitimate educational interest in the information contained in the specific record.

# Overlap of TITLE IX and BIT: UNDERSTANDING SCOPE & EXPERTISE

- Title IX office is responsible for addressing discrimination based on sex/gender.

- Upon notice of a report, the Title IX office must **investigate** the incident, **stop** the discrimination, **prevent** its recurrence, and **remedy** the effects.

- Title IX staff have expertise in investigations, due process, interim and supportive measures, etc., but not necessarily in violence risk assessment, prevention, and intervention.

- BITS are responsible for responding to **all** concerning behavior reported.

- BITs must receive all reports of concern, assess the risk for future concern, and deploy intervention to mitigate the risk.

- BIT members have expertise in responding holistically to student needs and are trained in identifying, assessing, and responding to indicators of problematic or violent behavior but not necessarily in investigations, hearings, and due process.

- Communication between BIT and TITLE IX utilizes the strengths and expertise of the BIT and of Title IX practitioners, by:
  - Streamlining processes
  - Avoiding duplication
  - Removing silos

- Title IX is accustomed to conducting investigations and implementing prompt and effective responses to stop the behavior, remedy the impact, and prevent the recurrence. Increasingly involving a risk assessment component:
  - Emergency removals (formerly "interim suspensions")

- BITs are designed to assess behavior as reported using an objective rubric and intervene using standardized intervention protocols.
  - Reduces the vulnerability for accusations of bias.
  - Processes and interventions apply to everyone (not just sex- or gender-based incidents like Title IX).

- When the intersection of these two processes is done well, students and employees are better served and educational communities are better protected.

# OVERLAP OF TITLE IX AND BITS

## Confluence of cases and systems

- Cases involving reporting parties who are targeted on basis of sex, gender, gender identity, gender expression/manifestation.
  - Sexual assault, domestic violence, dating violence, stalking, hazing, threats of violence, vandalism etc.
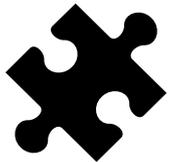
- Student of concern, threat/act of violence reported to BIT requiring its intervention and necessitating Title IX-based response
  - Prompt and effective responses designed to stop the behavior, remediate the impact and prevent the recurrence
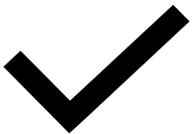
- Needs & accommodations for both Complainant and Respondent.

# OVERLAP OF TITLE IX AND BIT

## Title IX Cases

Cases involving incidents of aggression, threats of violence, violence, harm to self, stalking, hazing, vandalism, substance abuse.

For example:

Complainant experiences hallucinations which cause them to believe they are being stalked.

Respondent has history of suicidal ideation.

Employee's ex partner repeatedly calls the workplace and makes threats to employee and coworkers.

## BIT Cases

Referrals to the BIT that have components of gender based violence necessitating Title IX-based response.

For example:

Multiple women report that a male student is "making them uncomfortable" and behaving strangely.

Employee notifies campus police that they recently obtained an order of protection from their estranged spouse.

Student employee has been frequently late or absent from work, is overheard arguing with their partner on the phone, and has visible bruising on multiple occasions.

# OVERLAP OF BIT AND TITLE IX

## Sharing Information

- Interim and Supportive Measures
  - No-Contact Orders
  - Housing assignments and restrictions
  - Classroom or classwork modifications
  - Restrictions to areas of campus/specific activities
- Emergency Removals
- Pending Informal Resolutions
- Pending Investigations/Formal Resolutions
- Outcomes, Sanctions, and Remedies
- Pending criminal investigations
- Consider communications strategies

# DISCUSSION

- How can we anticipate that new Title IX regulations will impact the work of our BIT? How do we think the new Title IX regulations might shift or cause our work to evolve?

- What are some opportunities that we have to reach out to actively engage with students who have experienced sexual harassment?

- How can the BIT support the work of Respondents in Title IX matters?

# 2020 REGS: EMERGENCY REMOVAL

- May remove a student respondent from the college's education program or activity on an emergency basis, only after:
  - Undertaking an individualized safety and risk analysis, and
  - Determining if an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and
  - Providing the respondent with notice and an opportunity to challenge the decision immediately following the removal while respecting all rights under the IDEA, ADA, and 504, as applicable.
- May place a non-student employee respondent on administrative leave during the pendency of a grievance procedures.

# VIOLENCE RISK ASSESSMENT (VRA)

- ***Threat assessment*** is the process of assessing the actionability of violence from an individual to another person or group following the issuance of a direct or conditional threat.

- A ***Violence Risk Assessment (VRA)*** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

- A VRA occurs in collaboration with the BIT, CARE or threat assessment team and must be understood as an on-going process, rather than a singular evaluation or meeting.

# VIOLENCE RISK ASSESSMENT (VRA)

- VRAs require ***specific training*** and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Behavioral Intervention Team (BIT)/CARE team members.

- A VRA is *not an evaluation for an involuntary behavioral health hospitalization* (e.g. "blue paper" in Maine; 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment.

- A VRA assesses ***the risk of actionable violence***, often with a focus on targeted/predatory escalations and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

- **An appraisal of risk factors that escalate the potential for violence;**

- **An appraisal of risk factors that escalate the potential for violence;**

- **a determination of stabilizing influences that reduce the risk of violence;**

- **An appraisal of risk factors that escalate the potential for violence;**

- **a determination of stabilizing influences that reduce the risk of violence;**

- **a contextual analysis of violence risk by considering environmental circumstances, hopelessness and suicidality, catalyst events, nature and actionability of threat, fixation and focus on target, grievance collection, and action and time imperative, etc.**

# VIOLENCE RISK ASSESSMENT (VRA)

- To assess an individual's level of risk for potential, actionable violence prior to an emergency removal or in pursuing notice when a formal complaint is not filed, the Title IX Coordinator will use the violence risk assessment process through the BIT.

- The BIT will assign a trained individual to perform the assessment, according to the specific nature of the Title IX case.

- The assessor will follow the process for conducting a violence risk assessment as outlined in the BIT manual or your existing operating processes and will rely on a consistent, research-based, reliable system that allows the for the operationalizing of the risk levels.

# Violence Risk Assessment (VRA)

- Some examples of formalized approaches to the VRA process:
  - The NaBITA Risk Rubric
  - Structured Interview for Violence Risk Assessment (SIVRA-35)
  - Extremist Risk Intervention Scale (ERIS)
  - Looking Glass or VRAW[2]
  - Workplace Assessment of Violence Risk (WAVR-21)
  - Historical Clinical Risk Management (HCR-20)
  - MOSAIC

www.nabita.org/tools          www.nabita.org/resources/assessment-tools/sivra-35/
www.nabita.org/resources/assessment-tools/eris/     www.nabita.org/looking-glass
www.wavr21.com                    http://hcr-20.com
www.mosaicmethod.com

- The VRA is conducted independent from the Title IX process, free from outcome pressure.

- The individual conducting the assessment must have training to mitigate their bias and provide the analysis and findings in a fair and equitable manner.

- The BIT/CARE or threat team conducts a VRA process and makes a recommendation as to whether the Title IX Coordinator should pursue notice even when a formal complaint is not filed, or as to whether the Title IX Coordinator should consider an emergency removal, in cases where a VRA indicates there is a substantial and compelling risk to health and/or safety of the community.

- Lisa broke up with Devon earlier in the semester and asked that he leave her alone.

- Devon did not take this well, he has been texting her, talking to her friends and waiting for her outside of her classes. This has resulted in several conduct actions and a no-contact.

- Devon continues to struggle with the no-contact order, telling friends it is just a "misunderstanding," that nothing will stop their love and "if she would just listen, she would realize we are meant to be together." Devon pitches a tent outside of Chu Hall, where Lisa lives.

- Lisa learned about Devon's comments and is very fearful. She filed a formal Title IX complaint after receiving a private message on Instagram of Devon burning pictures of them as a couple.

- Lisa's extremely distraught over the messages and the tent and decides to start commuting from home in Portland.

- Lisa's mother calls the Title IX Coordinator, demanding that Devon be suspended so that Lisa can return to school.

- Is there a basis here for an emergency removal? Why or why not?

- What can or should the BIT be doing? What can the Title IX office be doing?

# CONTACT US

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