

STUDY GUIDE :
BIT & TITLE IX INTERSECTIONS

20-Minutes-to...
Trained

PRESENTED BY:

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20-Minutes-to...*Trained*: BIT & Title IX Intersections Table of Contents

Learning Outcomes-----	Page 2
Discussion Questions-----	Page 3
Case Studies-----	Page 4
Claire	
Che	
Case Study Questions & Answers-----	Page 6
Claire	
Che	
ATIXA’s Tip of the Week: BIT & Title IX Intersections-----	Page 8
TNG’s Title IX meets BITs: Handling Gender-Based Complaints through Campus Collaboration-----	Page 9
TNG’s Online Training Slides: Title IX and Behavioral Intervention Teams-----	Page 21

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20-Minutes-to...*Trained*: BIT & Title IX Intersections Learning Outcomes

- Participants will appreciate the value of facilitating appropriate communication and collaboration between BIT and Title IX administrators.
- Participants will understand the separate but sometimes convergent goals of BIT and Title IX administrators.
- Participants will be able to explain the value of appropriate information sharing between BIT and Title IX administrators to the institutional community.
- Participants will be able to make policy and process recommendations to ensure BIT and Title IX administrators share information and coordinate activity when appropriate.



20-Minutes-to...*Trained*: BIT & Title IX Intersections Discussion Questions

- When do Title IX program objectives intersect with BIT program objectives?
- Under what circumstances might sharing information between Title IX and BIT administrators be inappropriate?
- What functional activities within Title IX and BIT programs could be coordinated to reduce duplication, increase communication, and improve the effectiveness of both programs?
- What specific types of information should be shared by BIT administrators with Title IX administrators and vice versa? Why?



20-Minutes-to...*Trained*: BIT & Title IX Intersections Case Studies

Claire

This situation comes to your attention because Claire's roommate, Ellen, is concerned about them. She has heard them fighting both on the phone and in Claire's room. She feels that David is possessive and abusive.

Ellen's Statement

I've known Claire for almost 10 years. In the last couple of years since she started dating David, she has not been the strong independent woman that I've known. I've never witnessed David actually hit her, but I have noticed that after I hear them fighting she will always wear long sleeves and/or long pants. I've seen him grab her forcibly when we were out and he wanted to leave and she did not want to go. I also saw him do it when he wanted her to go with him to his apartment and she did not want to leave our apartment.

The reason I'm here is because the other night when she was out studying he came by and wanted to come in and wait for her. I wasn't comfortable having him wait for her while I was going to bed, so I asked him to leave. He told me he would just wait a little while longer and then he would lock up. I told him no, and that I wanted him to leave now. He refused, and while we were arguing about this, Claire came home. He said, "Your bitch of a roommate was about to kick me out, do you mind if I stay here tonight with you?" Claire told him that she thought it would be better if they spent the night at his house, but he insisted on staying at ours. They went into her room, and I could hear them arguing. They weren't shouting but I could tell they were arguing.

Yesterday, when I came home, David was in our house. He said he was leaving a note and a gift for Claire. I asked him how he got in, and he said Claire gave him a key. I told him I didn't believe him, and that I thought he had had a key made without Claire knowing. He told me to go ahead and ask her. I did, and Claire told me that she did not give him a key and that he must've taken it from her purse when he dropped her off at class earlier that day. She seemed to think it wasn't a big deal but I think it is.

I know that he has left marks on her that I've only seen very quickly but I'm afraid for her safety and you need to do something about this.

Che

Che, a female student, was failing history. She was doing a group project with three other history students, Jack, Franco, and Serge. After the end of the project, Che's behavior changed dramatically, and her professors noticed. Two faculty members contacted members of the BIT to express their concern with the dramatic and sudden changes in Che.

When Che meets with a member of the BIT, she explains that the boys in her group told Che they were going to their teacher to have her removed from the group because she was going to drag down the group grade. Che begged the boys not to drop her, because she needed them to help her pass the class. The boys ended up letting her stay in the group, but she had to do some things she didn't like in order to convince the boys not to request she be removed.



20-Minutes-to...*Trained*: BIT & Title IX Intersections Case Studies Question & Answer

Claire

For Discussion:

- Before assessing policy implications, what issues should stand out to the TIXC?
 - Claire may be in an IPV situation. The BIT can lend expertise in planning how to appropriately approach Claire regarding the report.
 - The BIT may have additional information regarding Claire & David's relationship.
 - The BIT can assess Claire's safety and potentially help with offering/implementing supportive measures.
- What information might the TIXC share with BIT administrators? What information might the TIXC request?
 - The TIXC may have information regarding prior allegations against David that may help the BIT assess Claire's safety.
 - The TIXC would be aided by any information the BIT can share regarding Claire and/or David, particularly if the BIT has interacted with either in the past.
 - The TIXC can request expert assistance regarding dealing with reporting parties in IPV situations.
- How would BITs response to information shared by the TIXC assist in meeting Title IX's response mandates for institutions?
 - The BIT could coordinate supportive measures without making them appear to be the result of an IPV allegation.
 - The BIT may be in a better position to evaluate Claire's safety and contribute to a safety plan in the event of formal resolution.
- How could the BIT advise the TIXC regarding next steps in response to the report?
 - BITs are more likely to have experienced professionals with backgrounds in supporting IPV victims.

- The BIT has a valuable perspective on supporting students that may augment the TIXC's offer for supportive measures.
- The BIT may already have background information on Claire and/or David that will help the TIXC assess the current situation with regard to formal resolution options.

Che

For Discussion:

- Why might the BIT contact the TIXC based on the information shared by Che?
 - Che has insinuated she was coerced into doing things she didn't want to with the boys in her group.
 - The TIXC can coordinate with the BIT to provide supportive measures, but can also assess the need for formal resolution if there are circumstances constituting potential violations of the sexual misconduct policy.
 - Even if Che does not wish to pursue formal resolution, the TIXC needs to assess the situation, both to document any potential violations and to consider formal resolution without Che's participation.
- How do institutional mandates govern reporting potential sexual misconduct? Can BIT members guarantee confidentiality?
 - Institutions typically designate employees required to report. Many institutions designate most or all employees as "responsible employees" mandated to report.
 - Most members of the BIT are not able to extend confidentiality to Che. Confidential resources are typically only licensed counselors or clergy, and only then when they are acting in that capacity on behalf of the institution.
- How should the BIT communicate to Che before contacting the TIXC?
 - The BIT should encourage Che to contact the TIXC herself. However, regardless of what Che decides to do, she should be informed that the circumstances will be reported and the TIXC may contact her.
- How could the Title IX program response assist in meeting the BIT's goal for supporting Che?
 - BIT can provide support and assess for safety. The TIXC can augment the BIT's work by offering a wider range of supportive measures as well as informing Che of her options for formal institutional resolution.
- How could the TIXC advise the BIT regarding next steps to take with Che?
 - Based on the circumstances as they evolve, the TIXC can continue to communicate with the BIT regarding implementing supportive measures.
 - The TIXC may use the report built between Che and the BIT to encourage her to formally report the circumstances if they constitute potential sexual misconduct.



**ATIXA Tip of the Week
Newsletter
March 12th, 2015**

BIT and Title IX Intersection

Tip of the Week authored by Brett A. Sokolow, J.D., Executive Director, ATIXA

Should students involved in Title IX investigations be included as part of Behavioral Intervention Team (BIT) meetings? How do you manage the intersectionality while maintaining confidentiality?

We see a number of cases of BIT and Title IX intersection. Where a victim of sexual misconduct is struggling to cope, the case is often referred to the BIT, especially on campuses without a victim advocate. Often the case manager steps in to fill that void. Title IX administrators also refer cases to the BIT to assess whether a student suspended for a Title IX issue is safe to return to campus once the suspension has ended. Similarly, the admissions office uses the BIT to evaluate the suitability of applicants and transfer applicants who have a history of sex offenses, which has both Title IX and Clery Act implications.

We have worked with Title IX administrators who have referred several victims to the BIT after they have experienced depression, suicide risk and alcohol dependence in the aftermath of sexual trauma. We have also used the BIT to help in assessment of allegations of stalking, where the accused student is on the Autism spectrum. In terms of confidentiality, the typical protections of the Title IX office or team are similar to the protections afforded by the BIT. We share information with the expectation that each area will continue to maintain the privacy of the information shared as it does with all other cases.

Title IX meets BITs

Handling Gender-Based Complaints
through Campus Collaboration

A MINI PANEL WITH INSIGHTS FROM

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**PUBLISHED BY:
THE NCHERM GROUP, LLC.
WWW.NCHERM.ORG**

CONTENTS

INTRODUCTION 1
THE ISSUES
THE PANEL

THE LAW: WHO SHOULD
KNOW WHAT? 3

TITLE IX ADMINISTRATORS
ON THE BIT? 5

BOTH COLLABORATION
AND SEPARATION NEEDED 6

A CHALLENGING
INTERSECTION 8

BEST PRACTICES 9

CONCLUSION 10

RESOURCES 11

ABOUT THE NCHERM
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INTRODUCTION

Title IX administrators are the campus experts on that law, its implementing regulations, and compliance guidance from federal regulatory bodies. They bring to the table an understanding of how investigations into sex- and gender-related allegations should be conducted; of how to ensure equitable treatment of reporting and responding parties; and of institutional policies and procedures related to such offenses. Behavioral Intervention Teams, on the other hand, have expertise in threat assessment and in supporting students in mental distress while managing risk to the campus community.

The overlap between the work conducted by Title IX administrators and members of campus BITs should be clear. Not only do most, if not all, BIT members typically have mandatory reporting responsibilities under Title IX, but when it comes to instances of sex- or gender-based violence, BITs can also help with the task of information gathering to establish patterns of behavior, assess potential threats to reporting students or other members of the campus community, inform and implement supportive actions, map interventions in intimate partner violence and stalking situations, and determine appropriate remedies. BITs are also well positioned to address sex- and gender-based situations that may not rise to the level of requiring a Title IX response but could lead to harm later on.

Despite the many ways in which Title IX administrators and BIT members can help one another, such collaborations must be very intentional and individuals in each role must have a clear understanding of their role-related limitations to avoid common pitfalls that could potentially compromise Title IX investigations and create student confidentiality concerns.

In this paper, a hand-selected panel of experts tackles how to ensure collaborations between Title IX administrators and BIT members are occurring in the most effective way possible. If your Title IX office and BIT operate completely separately from one another, our experts' insights could provide a good starting point for breaking down those silos. And because our experts come from diverse professional backgrounds related to Title IX, campus safety, and mental health, they bring a variety of perspectives to ensure you've considered everything there is to think about in crafting an intentional, model partnership between the Title IX office and the campus BIT.

THE ISSUES

This paper addresses the five specific questions below to help you navigate the intersection of Title IX and Behavioral Intervention Teams:

1. Why must members of campus Behavioral Intervention Teams understand Title IX and its requirements?
2. Should Title IX administrators — coordinators, deputies and/or investigators — be part of campus BITs? Why or why not?
3. How should collaboration between Title IX administrators and BIT members occur given their distinct roles and focuses?

4. What are some common pitfalls and challenges related to the intersection of BITS and Title IX?
5. What best practices would you share on handling Title IX matters that make it to the BIT's table?

THE PANEL



Sandra K. Schuster is a partner with The NCHERM Group, LLC., a recognized expert in civil rights law for education, and a former college administrator. She has served as the general counsel for Sinclair Community College; the senior assistant attorney general for the State of Ohio, representing colleges and universities; the associate general counsel for the University of Toledo; and the associate dean of students at The Ohio State University. Schuster presents extensively on legal issues in higher education, and provides individual institutional consultation and training. She has also authored and co-authored numerous books for administrators. In addition, she is a former president of the Association for Student Conduct Administration, immediate past-president of the National Behavioral Intervention Team Association, or NaBITA, and a long-time member of the National Association of College and University Attorneys.



Brian Van Brunt serves as the senior executive vice president for professional program development at The NCHERM Group, LLC. He is also a past-president of the American College Counseling Association, president of the National Behavioral Intervention Team Association, and managing editor of Student Affairs eNews and the Campus IX Journal, a peer-reviewed publication by the Association of Title IX Administrators. He taught at the college level for many years and has served as a director of campus counseling. He now focuses on writing, conducting training seminars and conference presentations, and consulting with institutions through The NCHERM Group, LLC. In addition, he is the author of *Harm to Others: The Assessment and Treatment of Dangerousness, and Ending Campus Violence: New Approaches in Prevention.*



Amy L. Murphy is the dean of students at Texas Tech University and managing director of the Center for Campus Life. She additionally serves as the deputy Title IX coordinator for students, and chairs Texas Tech's Behavioral Intervention Team. As dean of students, she provides oversight to the Student Resolution Center, a department that offers safe reporting options for student-related concerns and the RISE Office, a new prevention and education unit focused on student wellness and safety. Murphy has spent more than 15 years in co-curricular and extracurricular student involvement and leadership activities through her role as the managing director of the Center for Campus Life. She also provides oversight and advisement to more than 450 registered student organization, including 40+ fraternities and sororities at the institution.



Kristin D. Kushmider is a licensed professional counselor in Colorado working in higher education administration at the University of Colorado Denver and Anschutz Medical Campus. Kushmider has spent her career in the fields of social work, K-12 special education and school counseling, victim advocacy, and higher education Behavioral Intervention Teams. She has researched and studied rape myth acceptance among counselors in training and the impact of vicarious trauma on counseling professionals. She is currently the director of the Office of Case Management and the campus CARE Team. Since assuming additional duties as the interim dean of students in September 2014, Kushmider has become more involved in the Title IX process and has taken a special interest in seeing this process succeed at the university.



Carolyn Reinach Wolf serves as a senior partner of the Abrams Fensterman Law Firm on Long Island, NY, where she is responsible for the mental health law practice area. Prior to practicing law, she worked as a hospital administrator and director of risk management. Her current practice concentrates in the areas of mental health and health care law, including higher education issues related to campus counseling, records confidentiality and release-of-information matters, capacity determinations, legal interventions, and risk management. Reinach Wolf has developed seminars, published many journal articles, and lectured extensively on mental health and health care law. Wolf also serves as an affiliated consultant for The NCHERM Group, LLC.



Adán Tejada currently serves as the director of public safety at Saint Mary's College in Moraga, California. In addition, he is the mountain pacific regional director of the International Association of Campus Law Enforcement Administrators, or IACLEA. He is also a member of the NaBITA advisory board. He was formerly employed at the University of California, Berkeley Police Department for 28 years, retiring from that department as a lieutenant in 2012. Among his many assignments during his time at Berkeley were administration, community outreach, and investigations.

THE LAW: WHO SHOULD KNOW WHAT?

BVB: The issue here is the number of sexual assault, stalking, and intimate partner violence cases that have an impact on the larger campus community. There are always ripple effects that spread across campus through athletics, fraternities and sororities, residence halls, clubs and organizations, and into the classroom. So, one reason for the BIT to be concerned with Title IX violations is the impact these violations have on the campus community.

A secondary reason is one that is central to the BIT process; namely that we all work better together when conceptualizing and managing difficult cases. I could see the importance of obtaining consultation on most Title IX cases from law enforcement, campus conduct, counseling, academic performance, and residential life — perhaps not always on the particular details of the case, but at least in the abstract.

SKS: Although BIT members don't need the depth of knowledge about Title IX that a practitioner in that field would, it's important that BITs recognize when a situation they are addressing has elements of sex- or gender-based violence or discrimination and immediately include a Title IX administrator in the discussion. Title IX requires a prompt and effective response, and generally members of the BIT will be "responsible employees" with mandatory reporting requirements under Title IX. If data or information reaches the BIT first, a referral and consultation must be made quickly.

ALM: Behavioral Intervention Teams are well positioned to respond to notices of Title IX-related concerns from students and other members of a university community. BIT members will often be the initial point of notice or intake for a report, either directly from a student or from a third party like a faculty or staff member, requiring the BIT members to have knowledge and understanding of mandatory reporting requirements and immediate remedies for situations. A BIT's first response to a report sets the tone for the remainder of the university's interactions with a reporting party. It is a critical moment for establishing rapport and setting the stage for involvement in administrative and/or criminal investigation processes, as well as the use of university and community resources for complainants.

BITs should also understand the root factors associated with sexual violence and gender-based discrimination as elements to include in threat assessment discussions and to help with recognizing campus climate concerns. BITs are often skilled in evaluating patterns of behavior, predation, and risk factors for future violence — all critical considerations in a Title IX-based campus response to incidents.

KDK: I believe that it is important for anyone on campus working with students to have knowledge of Title IX and their responsibilities for reporting and creating a safe campus environment. BITs should have more extensive knowledge of Title IX because oftentimes students can present as being distressed or in crisis, which would typically be referred to the BIT, and they may disclose having experienced some form of sexual misconduct. Or, they may be the perpetrators of such misconduct and could potentially pose a risk to the greater campus community. The BIT should thoroughly understand Title IX and its requirements to report these behaviors so that they may assist the Title IX coordinator and/or investigator in identifying interim measures and neutral support services for both the reporting party and respondent. Finally, the key players typically on the team (e.g., counseling, case management, conduct, etc.) each have some role in reporting, remedying, educating, and offering support services to students impacted by sexual misconduct and other issues pertaining to Title IX.

CRW: The primary concern of any Behavioral Intervention Team is the safety of the campus — students, staff, and visitors. One way to accomplish this goal of safety is to eliminate different departments or administrations on campus from working independently in their own silos without sharing information. Accordingly, the members of a BIT must understand Title IX and its requirements, since it is possible that an issue of gender discrimination, allegation of misconduct, or violation of a campus policy relating to Title IX may be brought to the attention of the BIT.

THE BOTTOM LINE

BIT members must have a good understanding of Title IX, and Title IX officials should understand how the BIT operates, what its strengths are, and how those strengths can be of benefit to Title IX processes.

"Responsible employees" under Title IX who are part of a BIT must know and comply with mandatory reporting requirements.

BITs should be on the lookout for elements of sex- or gender-based violence or discrimination and immediately bring a Title IX staff member into the conversation.

The BIT may receive a report or complaint from a member of the campus related to gender discrimination, and it is the job of that BIT to work with any Title IX administrators to conduct an investigation, perform a threat assessment, and then determine the best plan of action, including any sanctions on the perpetrator. The BIT must understand Title IX and its requirements so that any decisions made by the BIT take into account what is non-discriminatory and permitted by law as well as what is good practice.

AT: It is very likely that BITs will encounter behaviors that intersect with Title IX. Since most BIT members are “responsible employees” under Title IX, we have a duty to report. Title IX training is critically important for BIT members.

THE BOTTOM LINE

Whether to include someone from the Title IX office on the BIT is a decision requiring consideration of many factors, some of which may be institution-specific. Regardless, there needs to be close collaboration between the Title IX office and campus BITs.

Depending on who the Title IX employee is, that individual may or may not be able to contribute to a BIT's work beyond Title IX-related situations.

A BIT model comprised of a “core” team with outside members, like Title IX officials who are called in as needed, may work well for many campuses.

TITLE IX ADMINISTRATORS ON THE BIT?

BVB: It is rare to have a Title IX administrator on the BIT. That doesn't mean we shouldn't do it. The general advice is to not have this person as a core member of the BIT each week (or however frequently the BIT meets), but invite that individual in as needed for discussion. You see this process demonstrated in our “A Window Into BIT” video training (<https://nabita.org/resources/a-window-into-bit/>).

The exception I would make is if the person could contribute significantly to the team discussions in other ways. There are times when we might have people on the team for the impact they have on discussions and communication. For example, if your Title IX person has been at the school for 30 years and knows everyone, it might make sense to have that person on the team for the good vibe and public relations it would create, as well as for his/her deep knowledge of institutional culture, history, and policies and procedures.

SKS: A representative from the Title IX team (generally, it's a deputy, but it could be the coordinator) should participate in the BIT training and should engage with the BIT in discussions involving issues of sex- and gender-based conduct, but does not need to be a regular standing member of a BIT (e.g., the “Inner Circle”). We could consider this individual an integral part of the “Outer Circle.”

ALM: A representative of the campus's Title IX staff should participate regularly on the BIT in a similar manner to a conduct officer. The BIT should never take the place of a Title IX-based response and remedy, but the BIT can inform timing, coordination, and other decision-making throughout the process.

The type of communication that is important between Title IX staff and other BIT members includes information about no-contact orders, potential interaction points, and shared resources between reporting and responding parties, the most common being the counseling center and the need to ensure that students are scheduled at different times. In addition, any student participating in a Title IX-related process has the potential to experience distress and exhibit behaviors of concern that should be considered by the BIT.

The standard processes BITs use to consider other elements of student behavior and history in determining an overall risk rating for a student of concern can be important in making decisions related to reports from reluctant victims as well as the prevention of future violence from students exhibiting patterns of behavioral concern.

KDK: I believe Title IX administrators should play a role on the BIT. Our campus designates 30 minutes of our BIT meeting time to discuss Title IX-related issues. I think it is important for the team to be up-to-date on current Title IX investigations for different reasons.

First, if the reporting party or respondent is referred to the BIT for exhibiting signs of distress, the BIT and case managers should already be aware of why this behavior is occurring. Secondly, the BIT is a well-rounded group of individuals trained in assessing for risk and identifying patterns of behavior. This type of information can be helpful to the Title IX personnel as they work through their investigation, identify interim measures, and try to remedy the situation. Also, if during a BIT assessment a student discloses having experienced some form of sexual misconduct or gender discrimination, the transition and referral to the Title IX coordinator can be a smooth one for the student if a relationship and trust have already been established between Title IX and the BIT. Finally, the BIT is knowledgeable in identifying resources both on campus and within the community; this may also be helpful to those involved in the Title IX process.

CRW: There may be a specific issue or case where the BIT could call in Title IX administrators to attend a BIT meeting to provide their expertise, as needed. It may be unnecessary to have a Title IX administrator as a permanent member of the team, as their expertise may not be necessary for other cases.

AT: It's likely that there will already be crossover. If there is not, I don't think you need to add people. You just need to make sure your BIT knows what to refer to the Title IX folks.

*"We work better by leaning on each other than we do by trying to do everything alone. Of course, there are limitations on how much the BIT should be involved in Title IX investigations, but there may be benefits to information gathering within the BIT."
— Van Brunt*

BOTH COLLABORATION AND SEPARATION NEEDED

BVB: We work better by leaning on each other than we do by trying to do everything alone. Of course, there are limitations on how much the BIT should be involved in Title IX investigations, but there may be benefits to information gathering within the BIT. I would imagine that many conversations would be held following BIT meetings, with the topics discussed at the meetings themselves focusing more on general information sharing that does not create conflict for the Title IX cases. The key here is the general consultation aspect of the process to better assist those in the specific investigatory or sanctioning work adopt a more informed process and make more effective decisions.

SKS: The role of a BIT is not to investigate or sanction. Rather, it's to gather relevant information and apply a good risk-assessment rubric, such as the NaBITA Rubric (<https://nabita.org/documents/THREATASSESSMENTTOOL.pdf>), to determine the best course of action in responding to lower-level behaviors of concern or a reported threat. The responsibilities of the Title IX coordinator are more proscribed (by the Office for Civil Rights) and would, as appropriate, include investigation and resolution.

The BITs and Title IX office can and should partner in any circumstance involving sexual violence (e.g., intimate partner violence, and dating and domestic violence) because of the threat potential and the skill and knowledge of the BIT in identifying appropriate responses to the conduct and the Title IX staff's knowledge and obligations to investigate, stop the misconduct, prevent the recurrence, and remediate the impact.

ALM: Work related to investigations and sanctioning should occur separately and apart from the BIT, outside of any initial information gathering that may inform Title IX investigators about areas related to a report. BIT members can be involved in general discussion around sanctioning and in the training of conduct officers and committees to inform them about factors to consider in sanctioning, but they should not be involved in individual case decision-making. BIT members influencing an investigation or sanctioning process beyond elements of education, timing, and coordination would not be appropriate because of the other professional roles and responsibilities that BIT members have, and because of the importance of preserving a neutral investigation process without conflicts of interest.

THE BOTTOM LINE

Campus BITs should help with risk assessment and determining the best course of action, but should neither investigate nor sanction in Title IX-related cases.

Balance the need for information-sharing between Title IX personnel and BIT members with the need to respect the privacy and confidentiality of sensitive information.

BITs are in a good position to implement supportive actions to both parties involved in a Title IX complaint and determine what remedial actions may help keep victims and others safe.

The role of assessment, on the other hand, is a function that can occur within the BIT and with the involvement of the Title IX-related staff member. BITs make assessments as a regularly occurring part of their responsibilities to support student interventions and to identify areas of risk for individual students and the campus community. Title IX staff make assessments to inform decision-making around continuing threats to the campus community and the nature of remedies needed for incidents, and to support the individual students involved in processes with appropriate resources and assistance. These two components can and should inform one another during the determination of a generalized risk level for students and the coordination of interventions and resources to assist the student.

KDK: In my opinion, the process for investigating and sanctioning a Title IX incident is separate from the work of the BIT. However, both processes can inform the other. I think there are a lot of variables to both a Title IX investigation and a BIT assessment with different levels of skill, expertise, and training involved. Separate investigations with the ongoing sharing of data, resources, and crosschecking would be beneficial to both areas.

CRW: The BIT and Title IX administrators should work together to carry out these tasks to prevent different departments on campus from working in silos and not communicating with each other. The tools of the BIT and the Title IX administrators can be combined to create a strong team of individuals who can put in place supports and other measures to assist the affected person and possibly the campus community, pending the outcome of the investigation. It is possible that a report will be made directly to a BIT regarding campus sexual misconduct or any type of gender discrimination, and it is the job of the BIT to work with the Title IX administrators to conduct an investigation, perform a threat assessment, and determine the best plan of action. Likewise, if the Title IX administration gets a similar report, it should report it to the BIT so the BIT can assist with ensuring campus safety and safety for the victim, in addition to discussing the consequences of the perpetrator's actions in accordance with school policy. If the BIT and Title IX administrators work separately, there could be inconsistency in how investigations are performed and what consequences are enforced. Open communication with a unified policy and process is a better system.

AT: BITs don't sanction — student conduct folks oversee sanctions. Fact-finding can be simultaneous, but there are different purposes. If the BIT needs to do fact-finding at the same time a Title IX coordinator, then coordinating efforts is best. The BIT will have a very good idea if Title IX needs to be/is involved in most cases, and if the behavior relates to sexual harassment, assault, or discrimination, clearly the question needs to be asked.

A CHALLENGING INTERSECTION

BVB: I think there's a danger of sharing too much during a BIT meeting, which has the potential of creating conflict or concern for an ongoing Title IX investigation. We should avoid sharing unnecessary details in the same way that counselors should avoid sharing too much information about their ongoing care with students and conduct officers should abstain from sharing details about hearing proceedings and appeals.

Title IX cases can also be very time-intensive to discuss on the team. One way to avoid becoming overwhelmed with these cases and avoiding creating conflict for existing investigations is to focus on sharing only general information.

THE BOTTOM LINE

Title IX officials should share enough with campus BITs to allow them to do their jobs effectively without providing unnecessary details that compromise students' expectations of confidentiality or rights to privacy.

Reports of sex- or gender-based discrimination may reach the BIT or the Title IX office first, so both need to know to reach out to the other when necessary.

BITs are in a good position to implement supportive actions to both parties involved in a Title IX complaint and determine what remedial actions may help keep victims and others safe.

Consider any potential conflicts related to staff members' roles on a BIT and their other professional duties.

SKS: Reporting and communication channels can be an area of challenge because reports of sex- or gender-based violence and discrimination may reach either the Title IX office or the BIT first, so each has to make sure that the other is looped in.

ALM: Recently, I observed an area of tension among BIT members when law enforcement representatives and the Title IX staff asked the counseling representative about information shared during the course of a counseling session from a reporting party. The question was related to a credibility determination in a Title IX investigation and the consistency of a student's report.

Counseling staff should not be placed in the position of being asked to divulge information from an individual student's counseling session for the purposes of a criminal or administrative investigation. Counseling sessions should be protected as options for support that are exempt from mandatory reporting requirements. Students should not have concerns about the confidential nature of what they share with counseling center staff. In addition, this questioning of counseling staff is not supportive of what is already a tenuous balance of confidentiality, student support, and campus safety in a BIT environment.

BITs are also becoming pseudo-sexual assault response teams. While this role may be appropriate for some campuses, it is important to recognize the distinct difference in coordinating a response to a sexual assault and the role of BIT to assess student risk and employ interventions for the students involved. In some situations, there is a conflict of interest related to the role a staff member plays during a BIT meeting and the role associated with the response to a sexual assault.

The coordination and intake of reports of sexual violence is a challenge among BIT and Title IX staff, particularly as more BITs utilize dedicated case management staff to assist with interventions. There is a need to coordinate the intake and provision of initial remedies to a student reporting sexual violence and then to provide a seamless hand-off to an administrative investigator. If a case manager takes an initial report of sexual violence and encourages the student to share the complete set of details surrounding the incident, we should be concerned about the number of times the student is asked to repeat the story as well as this information being collected outside the criminal or administrative investigation.

It becomes critical to help the BIT or case management staff to understand what information is needed immediately and what can wait for disclosure with an employee investigating the incident. Those involved must understand what is important to assist the BIT or case management when documenting conversations to create a seamless transition from the initial report through the investigation to final outcome.

KDK: Our team has recently integrated Title IX and the BIT, so we have not yet experienced any pitfalls or challenges. Our BIT is well trained and very experienced. Our institution is still in the process of creating a strong Title IX program, so at this time collaboration and communication seem to be going very well. One anticipated challenge may be students needing to meet with multiple staff members.

CRW: Mandated reporting policies to police, zero tolerance policies, and other knee-jerk reactions to gender discrimination or sexual misconduct are not ~~necessarily~~ in the best interests of the campus and all parties involved. The BIT must work together with Title IX administrators to ensure that all campus policies and the law are adequately followed.

Another challenge is that the BIT and Title IX administrators must be careful to prevent any HIPAA or FERPA violations in the course of mandated reporting and the investigation process. FERPA permits internal sharing of private education record information only where there is a “legitimate educational interest.” If the interest is strictly for law enforcement purposes, the BIT and Title IX administrators must be careful not to share information and violate FERPA.

There are also other confidentiality concerns that victims may have when reporting a Title IX violation to campus mental health professionals. Those professionals may have a duty to maintain confidentiality even in light of mandated reporting under Title IX.

AT: Because the Title IX effort is very time-sensitive and threat assessment can also be time-sensitive, coordination is important. We should all be working towards similar ends, so cooperation shouldn't be an issue.

BEST PRACTICES

BVB: I would suggest cross training as a best practice. The idea is training at conferences and in areas of study different than your own. This is a wonderful way to better understand the different perspective and ways of thinking related to Title IX, law enforcement, counseling, and student conduct. One of my most useful experiences while working at Western Kentucky University was attending the Association for Student Conduct Administration conference. That helped me work more effectively with our student conduct office. Likewise, when joining The NCHERM Group, LLC., I was able to sit through a four-day ATIXA training on the issue of Title IX investigations. That helped me better understand the processes involved in complying with Title IX, even though they were not primary job duties I've had in my career.

ALM: BITs should maintain consistency in how they approach Title IX and non-Title IX-related reports. Each student should be reviewed for a generalized risk level, with

"Because the Title IX effort is very time-sensitive and threat assessment can also be time-sensitive, coordination is important."
— Tejada

THE BOTTOM LINE

Make sure there is cross training between the BIT and Title IX office so that members of each understand where overlap exists, how to manage intersections between their caseloads, and how each can assist the other.

Collaborate to ensure there is consistency by both the BIT and Title IX office in how reports of sex- or gender-based discrimination are treated.

Pay attention to the campus climate, assessing regularly and taking steps to support a safer, more equitable campus.

Ensure both BITs and Title IX employees know of any actions taken on cases involving sexual misconduct allegations.

discussion about appropriate support and interventions separately from what may be occurring in the Title IX investigation process. I have an intake outline that is used by non-Title IX staff to assist in the coordination of receiving reports and transitioning to an investigator staff. BITS should also remain attentive to campus climate concerns that may be conducive to harassing or discriminatory behavior, staying alert for campus safety concerns, and identifying interventions to support the protection of the student educational environment.

KDK: I would begin by suggesting open communication. I think both BITs and Title IX professionals try to maintain some level of privacy when it comes to sharing specifics in a student's case; however, sharing this information could be extremely helpful. Also, it is about buy-in from both Title IX staff and BIT members, establishing a relationship and building trust so that students benefit from all of the resources available to them through this process. Finally, I would suggest extensive training in both areas so there is a working understanding of the responsibilities of the BIT and the Title IX coordinator, where they intersect, and how each area can assist the other.

CRW: The BIT should ensure that all portions of the investigation, plan of action, and determination of sanctions or consequences are documented. For a BIT to be effective, it must document all activities. From a risk management standpoint, the documentation offers some legal defensibility in the event that a BIT needs to demonstrate what steps it took throughout the investigation. It is important to ensure that cases do not slip through the cracks, that students, faculty, and/or staff at issue do not miss appointments, and that the BIT puts in place effective follow-up measures. When done properly, this provides a level of protection and risk reduction for the campus BIT.

AT: Make sure you know who the point-person is on the Title IX side. Make sure the conduct piece is coordinated (if applicable) from both angles. If the BIT decides someone needs to be removed from the community, make sure the Title IX side knows that is happening so Title IX administrators can decide on next steps for their investigation.

CONCLUSION

The time to ramp up institutional efforts to ensure Title IX compliance is now. The number of colleges and universities under federal scrutiny for their handling of sexual assaults is in the triple digits. OCR's "Dear Colleague Letters" and new guidance documents from April 2015 indicate that full Title IX compliance is expected. And both reporting and responding parties who feel that their institutions did not handle their cases appropriately are choosing to take their institutions to court with increasingly frequency. The risks in terms of federal enforcement action, legal costs and liability, and damage to reputation are greater than ever. On the other hand, institutions that do their best to ensure Title IX compliance send the message that they care about creating a safe, equitable campus environment and reduce institutional liability. Bridging the intersection of Title IX and campus BITS can help institutions get there. ♦

RESOURCES

“**A Window Into BIT**” is a BIT meeting simulation and training offered by The NCHERM Group, LLC. Learn more at <https://nabita.org/resources/a-window-into-bit/>.

“**Navigating the Intersection of Title IX and BITS: A Silo-Breaking Primer for Title IX Administrators and Behavioral Intervention Team Members**” is an Audio Essentials episode from The NCHERM Group, LLC. Learn more at www.ncherms.org/resources/audio-essentials/.

“**Summary of New Guidance from the Office for Civil Rights, U.S. Dept. of Education**,” issued in April 2015, is available at www.atixa.org/wordpress/wp-content/uploads/2012/01/April242015_ATIXA-Summary_OCR-Guidance3.pdf.

» “**Dear Colleague Letter on Title IX Coordinators**,” from OCR, is available at www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf.

» “**Letter to Title IX Coordinators**,” also from OCR, is available at www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf.

» “**Title IX Resource Guide**” can be downloaded at www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf.

“**Title IX and BITS**” is on-demand Online Training by The NCHERM Group, LLC. It is available at www.ncherms.org/online-trainings/recent-online-trainings/#ixbits.



Title IX and Behavioral Intervention Teams

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Title IX Overview for BITs

Title IX Coordinator and BITs

Overlap Between Title IX & BITs

Title IX Legal Hot Spots for BITs

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2

Title IX Overview for BITs

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 educational program or activity receiving federal financial assistance.”

Title IX of the Education Amendments of 1972
Implementing Regulations at:
20 U.S.C. § 1681 & 34 C.F.R. Part 106

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3

Title IX Overview for BITs

- Title IX of the Education Amendments of 1972 is a federal law intended to end sex discrimination in all areas of education
 - Applies to non-discrimination based on gender to all recipients of federal funds, both public and private institutions
 - Applies to issues of program equity, such as in athletics, and also to sexual harassment and sexual assault
- In addition to the law’s implementing regulations, guidelines are provided by U.S. Department of Education, Office of Civil Rights:
www2.ed.gov/about/offices/list/ocr/docs/shguide.html

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4

Title IX Overview for BITs

Title IX Covers

- Sex Discrimination
- Sexual Harassment
- Sexual Violence
 - Non-consensual Sexual Intercourse
 - Non-consensual Sexual Contact
 - Interpersonal/Relationship Violence
 - Stalking
- Retaliation
- Other violations when on basis of sex
 - E.g.: Bullying, Hazing, Voyeurism, Threats & Intimidation, Retaliatory Harassment
- Quid Pro Quo Sexual Harassment
- Pregnancy
- Program Equity
 - Academics
 - Athletics (3-part test)

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5

Title IX Overview for BITs

Notice

- Once a “responsible employee” has either actual or constructive notice of sexual harassment/sexual misconduct, the school must:
 - Take immediate and appropriate steps to investigate what occurred
 - Take prompt and effective action to:
 - Stop the harassment
 - Remedy the effects
 - Prevent the recurrence

NOTE: This is regardless of whether or not the victim makes a complaint or asks the school to take action.

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6

Title IX Overview for BITs

Responsible Employee

- A responsible employee includes any employee who:
 - Has the authority to take action to redress the harassment,
 - Has the duty to report harassment or other types of misconduct to appropriate officials, OR
 - Is someone a student could reasonably believe has this authority or responsibility
- Accordingly colleges and universities need to ensure that employees are trained regarding their obligation to report harassment to appropriate administrators

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7

Title IX Overview for BITs

The Clery Act

- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (1990) – “The Clery Act”
- Elements
 - Annual Security Report
 - Campus Crime Log
 - Timely Warnings & Emergency Notifications
 - Campus Security Authority (CSA)
 - Campus Sexual Assault Victims’ Bill of Rights
 - Sex Offender information dissemination
 - Enforcement & Fines
- Recently Amended by Section 304 of the Violence Against Women Reauthorization Act of 2013

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8

Title IX Overview for BITs

Campus SaVE Act

- Campus Sexual Violence Elimination Act (Campus SaVE)
- Adds substantial training and prevention programming requirements
- Addresses remedies and support for victims
- Adds reporting requirements to the Annual Security Report (more on this shortly)

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9

Title IX Overview for BITs

Campus SaVE Act

- Addresses violence-based behaviors
 - Domestic Violence
 - Dating Violence
 - Stalking
- These are all areas in which the campus BIT should be involved with the overview and discussion
- Although these three categories must be addressed with a Title IX based response, the campus BIT Team (or selected members) may have greater training and expertise in addressing the behaviors

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10

Title IX Coordinator and BITs

The Role of the Title IX Coordinator

- Contact for government inquiries
- Point person for campus complaints
- Oversight and coordination of prompt and equitable grievance procedures (faculty, student, staff)
- Creator and implementer of appropriate policies
- Prevention and remediation of:
 - Gender Discrimination
 - Sexual Harassment
 - Sexual Assault
 - Stalking
 - Intimate Partner/Relationship Violence
 - Bullying and CyberBullying
 - Retaliation

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11

Title IX Coordinator and BITs

The Role of the Title IX Coordinator

- Compliance auditor
- Training oversight: Faculty, staff, students, investigators, hearing officers, appellate officers
- Assurance of First Amendment Protections
- Section 504 Disabilities Compliance Oversight
- Athletics Gender Equity
- Assurance of compliance with requirement to stop, prevent, remedy
- Assurance of compliance with final sanctions

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12

Title IX Coordinator and BITs

Deputy Coordinators

- Institutions will often designate Deputy Title IX Coordinators for specific areas within the institution
 - Student Affairs
 - Human Resources
 - Academic Affairs
 - Athletics
 - Deputies are at the discretion of the institution
- Role is to fulfill, support and uphold the Title IX responsibilities of the institution and the Title IX Coordinator

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13

Title IX Coordinator and BITs

Should the Title IX Coordinator or Deputies serve on the BIT?

- Pros:
 - Provide a unique and institution-wide perspective
 - Helpful to appropriately respond to Title IX issues
 - They understand issues of accommodation & remedies, which are transferable to issues other than just Title IX
 - Well-versed and trained in campus policies and procedures
 - Student affairs-based Deputies typically have roles involving student conduct and/or residential education that can be valuable to a BIT

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14

Title IX Coordinator and BITs

Should the Title IX Coordinator or Deputies serve on the BIT?

- Cons:
 - Many of the issues discussed by the BIT will have little or no applicability to the Coordinator
 - It introduces another slate of meetings for an already full schedule; complications of scheduling another person
 - May leave other valid issues out of the room: e.g.: disability services coordinator, women's center etc.
 - Could lead to allegations of being bias: e.g.: too victim-centric

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15

Title IX Coordinator and BITs

Recommendations*

- Affiliate member of the BIT
 - The “we will ask you to attend when needed” group, rather than as a core member
 - Deputy Coordinator often makes a better fit as a core member
- Title IX Coordinator should be familiar with operations of the BIT
 - Consider having the Title IX Coordinator attend a few meetings to understand the process and approach

*Caveat – every institution is different!

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16

Overlap Between Title IX and BITs

Confluence of Cases and Systems

- Cases involving victims who are targeted on basis of sex, gender, gender identity, gender manifestation.
 - E.g.: Sexual assault, domestic violence, dating violence, stalking, hazing, threats of violence, vandalism etc.
- 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 victim and accused

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17

Overlap Between Title IX and BITs

Coordinating Responses and Systems

- Key overlap and Coordination between Title IX Coordinator and BIT
 - Ensure appropriate sharing of critical information
 - Provide the appropriate responses based on nature of situation
 - Title IX response should incorporate relevant BIT systems when reported behavior suggests that an individual's behavior poses a threat to themselves or to others
 - Mental health needs and assessments

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18

Title IX Legal Hot Spots for BITs

- VAWA Section 304
- Sexual Violence cases
 - Lawsuits by the accused
- Cross-constituency complaints
- Minors
- Student-athletes
- Bullying
- Accommodations for and providing appropriate avenues of support for victims



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19



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Upcoming Programs:

<http://www.nchem.org/online-trainings/upcoming-online-trainings/>



Questions for this Program?

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