Establishing a Violence Risk Assessment Process

ATIXA Workshop Endorsed by the National Association for Behavioral Intervention and Threat Assessment (NABITA)
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Course Introduction

The primary focus of this course is to help practitioners implement a process to determine the appropriate times a Violence Risk Assessment is warranted, who should execute the Violence Risk Assessment, and what to do next.

Title IX regulations mandate an individualized safety or risk analysis if an institution is going to limit educational access.

Our goal is to provide a comprehensive framework to establish and implement a Violence Risk Assessment as part of the Title IX Process.
Content Advisory

The content and discussion in this training will necessarily engage with sex- and gender-based harassment, discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.
Introduction
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 educational program or activity receiving federal financial assistance.”

Review: Applicability

- Education program or activity in the United States
- Downstream effects of external misconduct
- School/District has disciplinary authority over the context of the behavior
- Identity of the Complainant
- Applies to both students and employees
- Per the 2024 preamble, OCR will consider almost all off-campus sexual misconduct by school/district employees toward students to be within the school program/activity

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Review: Sex Discrimination

- Discrimination on the basis of sex includes:
  - Sex Stereotypes
  - Sex Characteristics
  - Pregnancy or Related Conditions
  - Sexual Orientation
  - Gender Identity
- “More than de minimis harm”
- Sex-Based Harassment
Review: Sex-Based Harassment

- Subset of sex discrimination
- Includes (the “Big Six” offenses):
  - Quid Pro Quo (QPQ)
  - Hostile Environment Harassment
  - Sexual Assault
  - Dating Violence
  - Domestic Violence
  - Stalking
- No consent definition provided
  - Develop or adopt one for the school/district
Review: Sexual Assault

- **Sexual Assault**: An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigations’ Uniform Crime Reporting system
  - Must include the six sub-offenses:
    - Rape, involves a lack of consent
    - Sexual Assault with an Object, involves a lack of consent
    - Sodomy, involves a lack of consent
    - Fondling, involves a lack of consent
    - Incest, irrespective of consent
    - Statutory Rape, irrespective of consent
Emergency Removal Rule:

“Emergency removal, requires a Recipient to undertake an individualized safety and risk analysis to determine whether an imminent and serious threat to the health or safety of a Complainant, or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal.”

§ 106.44 (h), Final Rule pg. 1537
Emergency Removals

- Emergency Removals provide the school/institution with the appropriate flexibility to respond to reports of sex discrimination, including to:
  - Preserve educational access
  - Protect the safety of all parties
  - Respond to emergency situations

Emergency Removal is **not intended to serve as a substitute** for resolution procedures that would resolve underlying allegations of sex discrimination.
Emergency Removals

- When considering an Emergency Removal for allegations of sex discrimination, Title IX regulations mandate an **individualized safety and risk analysis**
  - To determine if an **imminent and serious threat**
    - to the health or safety
    - of a Complainant, or any students, employees, or other persons
- **Imminent threat** may not be active or immediate, but are likely to occur soon
- **Serious threat** includes non-physical threats
  - Non-physical threats can be assessed as objectively as physical threats
- An intentionally high standard, Emergency Removal should be rare
- 2024 Regulations do not specify elements of an individualized safety and risk analysis
Emergency Removal

- A student Respondent may be removed from the education program or activity on a **limited emergency basis**, **only after**:
  - A completed individualized safety and risk analysis
  - Determination of an imminent and serious threat to the health or safety
  - Respondent has been provided notice and an opportunity to challenge the decision immediately following a removal

- All rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act must be upheld

- The Emergency Removal provision cannot be used to permanently remove a Respondent from its education program or activity
Employee Administrative Leave

- The Emergency Removal process does not apply to employees
- Non-student employee Respondent can be placed on administrative leave during the Title IX grievance process
  - Follow school or institutional policy
- All rights provided under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act must be upheld
Emergency Removal Behaviors

Behaviors that may necessitate a determination about Emergency Removal include all forms of sex discrimination, but most often involve:

- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking
Behavioral Intervention Team Overview
This presentation refers to BITs and BIT/Care Teams as a catch all for those groups who coordinate and perform behavioral intervention-related work

- K-12 schools or others may have a different name and/or function may be incorporated into another structure

BIT/Care Teams are school/institutional officials who meet regularly to:

- Gather and review information about individuals in the school/institutional community
- Assess level of risk using an objective tool
- Deploy support, resources, and interventions

BIT/Care Teams address far more than sex- or gender-based incidents, but may be a resource to assist with an individualized safety and risk analysis for such incidents
BIT/Care Team Scope

BIT/Care Teams address all levels of concern from early intervention to threat assessment
Designated BIT/Care Team Officials

- The BIT/Care Team is comprised of school/institutional officials
  - With training and authority
  - To gather data, employ objective risk rubrics, and develop individualized interventions to mitigate risk
- Such officials typically include:
  - School/Institutional leadership (e.g., Dean of Students, VPSA, Principal)
  - Mental health counselor (e.g., Director of Counseling, Social Worker)
  - Student conduct (e.g., Director of Conduct, Vice Principal)
  - Safety/Law enforcement (e.g., Campus Safety, SRO)
BIT/Care Team Process

- Gather Data
- Assess
- Intervention
BIT/Care Team Process: Gather and Assess

- Members of the school/institutional community refer individuals to the BIT/Care Team when there is a concern for the safety and/or well-being of the individual.

- BIT/Care Teams gather data including information related to the individual referred, including any known incidents, history of behavior, etc.

- Using the data gathered, the BIT/Care Team analyzes all known information using an objective tool to determine level of risk of harm to self or others.
  - Examples of objective tools:
    - NABITA Risk Rubric
    - SIVRA 35
BIT/Care Team Process: Interventions

- The BIT/Care Team deploys interventions, based on the data obtained from a thorough and objective analysis of all available information.

- BIT/Care Team interventions:
  - Are tailored to the severity of risk
  - Use a range of options, including:
    - Check-ins
    - Case Management
    - Parental/Guardian Contact
    - Mandated Assessments
    - Involuntary Leaves

- BIT/Care Teams engage in ongoing follow-up and connection to resource (as needed)
Title IX on the BIT/Care Team

- ATIXA recommends that TIXC or a Deputy serve as a liaison with the BIT/Care Team
  - Invited to meetings when relevant individuals are on the agenda
- TIXC should be well-trained in BIT/Care Team philosophy, procedure, and operations
- BIT/Care Team members should be well-trained in scope of Title IX, Title IX response to reports, and how to file a report
BIT/Care Team and Title IX Overlap
Distinguishing Title IX and BIT/Care Team

**Title IX Team**
- Addresses sex discrimination and sex-based harassment
- Required to **stop** discrimination, **prevent** its recurrence, and **remedy** the effects
- Responds to reports, notice, or complaints of sex discrimination and sex-based harassment
- Expertise in evaluating reports/complaints, investigations, due process, interim measures, making findings, issuing sanctions, etc.

**Behavioral Intervention Team**
- Responds to **all** types of concerning behavior
- **Gathers** information, **assesses** the risk for future concern, and **deploys** interventions to manage/mitigate the risk
- Expertise in responding holistically to student needs, trained in identifying, assessing, and responding to indicators of problematic or violent behavior
- Not disciplinary in nature
Overlap of Title IX and BIT/Care Team

Title IX Reports
Referrals involving components of sex- and gender-based violence necessitating Title IX response

For example:
- 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 and has visible bruising on multiple occasions

BIT/Care Team Referrals
Complaints involving incidents of aggression, threats of violence, violence, harm to self, stalking, hazing, vandalism, substance abuse

For example:
Respondent has history of suicidal ideation
Employee’s ex-partner repeatedly calls the workplace and makes threats to employee and coworkers
Mutual Referrals and Overlap

**Title IX to BIT/Care Team**
Title IX may refer incident(s) to BIT/Care Team that do not fall within Title IX jurisdiction or do not rise to the level of a VRA

**Objective VRA**
A member of the BIT/Care Team may conduct a VRA for individuals that are engaging in threats or acts of violence

**BIT/Care Team to Title IX**
BIT/Care Team may refer incident(s) to Title IX that involve parties being targeted

**Supportive Measures**
BIT/Care Team and Title IX may provide supportive measures to those participating in the Title IX process
Information Sharing

Title IX and BIT/Care Team may share information in a streamlined and timely manner:

- Family Educational Rights and Privacy Act (FERPA): legitimate educational interest
- Supportive Measures
  - No contact orders
  - Housing assignments and restrictions
  - Classroom or classwork modifications
  - Restrictions to areas of campus/specific activities
  - Emergency Removals
- Commonly shared information:
  - Pending VRA process and report
  - Pending investigations, informal resolutions, hearing process
  - Outcomes, sanctions, and remedies
  - Pending criminal investigations
Violence Risk Assessment (VRA) Overview
Types of Assessments

- General Risk Assessment
- Threat Assessment
- Psychological Assessment
- Violence Risk Assessment
Types of Assessments

- **General Risk Assessment**
  - Broadly used for a variety of situations and concerning behaviors
  - Focuses on proactive approach, with interventions to lower risk and ease distress

- **Threat Assessment**
  - Completed in response to explicit or veiled threat
  - Focuses on details of threat, actionability, and crisis response
  - Often limited to determining likelihood of violence as related to specific threat

- **Psychological Assessment**
  - Conducted by a trained, licensed clinician
  - Focuses on determining diagnosis and treatment plan such as therapeutic intervention, medication, hospitalization, etc.
VRA

- Helps determine potential violence or dangerousness toward a person, group, or system
- Explores various risk factors and protective elements in comprehensive manner
- Not predictive, but an estimate of the factors that make it more or less likely the individual will engage in violence
Administering a VRA

- No specific position or educational degree required
  - Should not be the TIXC
  - Conducted by trained assessor, could be a member of BIT/Care Team
- Requires training and expertise in using an objective risk assessment tool
- Competency in:
  - Conducting a VRA
  - Gathering information
  - Building rapport
  - Bias and Cultural issues
Objective Tool

- An objective tool allows the assessor to rely on standardized, research-based risk factors
- Mitigates bias and subjectivity
- Allows for more consistent and supportable outcomes
- Examples of Objective Tools:
  - NABITA Risk Rubric
  - SIVRA-35
Jurisdiction Determination

- TIXC determines if Title IX jurisdiction applies
  - If Title IX applies, TIXC will need to determine if the alleged behavior may warrant the need for Emergency Removal
- If the alleged behavior is not within Title IX jurisdiction, it could still violate school/institutional policy and be addressed under:
  - School/institutional harassment/discrimination policies
  - Student handbook/conduct policies
  - Technology/Acceptable use policies
  - Employee handbook/conduct policies
  - Professionalism standards
When Title IX Applies

- TIXC determines if the alleged behavior may meet the standard for Emergency Removal:
  - Does the alleged behavior pose an imminent and serious threat to the health and safety of the Complainant, any student, or other person?
    - As noted previously, this is a high threshold
    - To determine if an Emergency Removal is necessary, TIXC should evaluate the known information, including risk factors, using an objective referral protocol

- Schools/Institutions should consider what referral protocol will be implemented to ensure a thorough review, maintaining consistency between complaints
When Title IX Does Not Apply or Emergency Removal is Not Under Consideration

- If Title IX does not apply, TIXC should refer the report/complaint to the appropriate school/institutional process or office.

- Reports/Complaints that do not rise to the level of a referral for a VRA, the School/Institution should still take steps to:
  - **Provide support and resources** to the Complainant
    - Address any “downstream effects”
  - **Determine if patterns or institutional variables contributed** to the alleged incident(s)
  - **Take what action it can** (e.g., trespass the person)

- The BIT/Care Team process should still be engaged to address the behavior/impact.
The presence of one or more of the following risk factors would likely necessitate a VRA:

- The incident(s) included physical violence resulting in injuries (e.g., strangulation, asphyxiation, punching, kicking)
- Threats to kill the Complainant or others
- Threats of future physical violence or retaliation that would result in physical harm to the Complainant or those close to the Complainant (e.g., strangulation, asphyxiation, punching, kicking)
- The incident(s) involved the use of a lethal weapon
- Allegations of ongoing stalking behaviors
### ATIXA Title IX VRA Referral Protocol

#### Dating Violence (excerpt):

<table>
<thead>
<tr>
<th>Points</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ 1 Point</td>
<td>The reported incident(s) is recent</td>
</tr>
<tr>
<td>☐ 1 Point</td>
<td>The Respondent has access to weapons</td>
</tr>
<tr>
<td>☐ 2 Points</td>
<td>The reported behavior has escalated and/or increased in severity and/or frequency</td>
</tr>
<tr>
<td>☐ 3 Points</td>
<td>The Respondent has violated a no contact order, restraining order, or order of protection related to this allegation</td>
</tr>
</tbody>
</table>

- **0-3 total points** = Potential non-immediate threat; refer to BIT/Care Team
- **4+ total points** = Potential immediate threat; initiate VRA as part of Emergency Removal process
VRA Process
If there is a need to initiate a VRA as part of the Emergency Removal process, ATIXA recommends the following steps:

- TIXC mandates a VRA of the Respondent
  - Written notification provided to Respondent including:
    - Obligation to comply
    - Rights of Respondent
- TIXC notifies the BIT or designated VRA Assessor and provides documentation regarding the incident(s) and/or behavior(s) that required a VRA referral
- If the Respondent does not fully cooperate with the VRA, the Respondent is referred to the student conduct process
Title IX VRA Process

1. TIXC receives report or complaint
2. TIXC completes Title IX VRA Referral Protocol
3. TIXC refers to BIT/appropriately trained VRA Assessor
4. Assessor sends VRA report to TIXC with recommendations
5. Assessor completes VRA
6. TIXC determines appropriateness of Emergency Removal & other supportive measures
VRA Elements

Precipitating Events
What might have precipitated the behavior or threat?

Cultural
What cultural factors might be at play?

Context

Individual
What do we know about the individual and their baseline behavior?

Content
What type of behavior is present?
VRA Process Considerations

- What VRA tool or protocol will you use to complete an individualized risk assessment?
  - If deploying an already made tool:
    - Was it developed using current research?
    - Has it been validated?
    - Is it reliable?

- Who will you designate to conduct the VRA?
  - What training should they obtain or have?
  - What is their availability to complete a VRA in a timely manner?
1. Direct threat to person/place/system
2. Has tools, plans, weapons, and/or 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
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>18.</strong> Little remorse or bravado</td>
<td><strong>29.</strong> If serious MH issue, not in care</td>
</tr>
<tr>
<td><strong>19.</strong> Weapons access or training</td>
<td><strong>30.</strong> Objectification of others</td>
</tr>
<tr>
<td><strong>20.</strong> Glorifies/studies violence</td>
<td><strong>31.</strong> Sense of being owed</td>
</tr>
<tr>
<td><strong>21.</strong> Disingenuous/externalize blame</td>
<td><strong>32.</strong> Oppositional thoughts/behaviors</td>
</tr>
<tr>
<td><strong>22.</strong> Acts superior/lacks empathy</td>
<td><strong>33.</strong> Evaporating social inhibitors</td>
</tr>
<tr>
<td><strong>23.</strong> History of impulsive risk-taking</td>
<td><strong>34.</strong> Overwhelmed from loss or stress</td>
</tr>
<tr>
<td><strong>24.</strong> History of conflict (authority/work)</td>
<td><strong>35.</strong> Drastic behavior change</td>
</tr>
<tr>
<td><strong>25.</strong> Extreme poor frustration tolerance</td>
<td></td>
</tr>
<tr>
<td><strong>26.</strong> Trouble connecting/lacks trust</td>
<td></td>
</tr>
<tr>
<td><strong>27.</strong> Substance abuse/acting out</td>
<td></td>
</tr>
<tr>
<td><strong>28.</strong> Serious mental health Issues</td>
<td></td>
</tr>
</tbody>
</table>
**VRA Results**

- VRA results (or scores) should be compiled into a comprehensive VRA report that is given to the TIXC at the conclusion of the assessment.
- VRA report guides the Title IX and/or BIT interventions.
  - Should highlight the risk and protective factors.
  - **Should clearly articulate if the presence of an imminent and serious threat exists** (typically based on objective scoring).
- VRA report provides the objective basis for Emergency Removal determination.
- Schools/Institutions should consider using a template for the VRA report to ensure consistency across reports and thorough documentation.
# VRA Results Example

<table>
<thead>
<tr>
<th>Risk/Protective Factor</th>
<th>Presence (Yes/No/Partially)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Direct threat to person/place/system</td>
<td>Yes</td>
<td>The interviewee stated via text message that he would kill the target if they reported the alleged abuse to the institution. Interviewee reports that they would never follow through with these statements.</td>
</tr>
<tr>
<td>3. Fantasy rehearsal</td>
<td>No</td>
<td>The interviewee reports no drawings, writings, verbal communications or thoughts about harming others. No additional information collected indicates the presence of such material.</td>
</tr>
<tr>
<td>9. Suicidal thoughts with plan</td>
<td>Partially</td>
<td>The interviewee reports passive suicide ideation, but has not plans, intention, or means.</td>
</tr>
</tbody>
</table>
Emergency Removal Notification and Challenge
Emergency Removal Notification

- If at the completion of an individualized safety and risk analysis it is determined that an imminent and serious threat to the health or safety of a Complainant, or any students, employees, or other persons justifies removal:
  - The school/institution must provide the Respondent with:
    - Notice of the Emergency Removal determination (ATIXA recommends this be in writing)
    - An opportunity to challenge the decision immediately following the removal

- The Emergency Removal provision cannot be construed to modify any rights under the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990
Emergency Removal Challenges

- **Respondent must be allowed to challenge** the Emergency Removal decision
- School/Institution may allow the Complainant to challenge the parameters of an Emergency Removal
- 2024 Regulations do not specify level of process a school/institution must provide to challenge an Emergency Removal
  - School/Institution will need to determine who will hear and decide challenges to an Emergency Removal while avoiding conflicts of interest for those involved in the investigation and/or resolution process
- Often, challenges will take the form of a “show cause meeting” or a review of documents/written statements
  - **This review is not a hearing on the merits of the allegation(s),** but rather an administrative process to determine solely whether the Emergency Removal and/or supportive measures are appropriate
Considerations When Results are Challenged

- If a challenge meeting is allowed by the school/institution policy:
  - Respondents and Complainants may be accompanied by an Advisor of their choice
    - For K-12 this only applies if Advisors are allowed by school/district policy
    - For K-12 parent/guardian may be present
  - The administrator designated to make a determination about an Emergency Removal challenge should have sole discretion to implement or stay the emergency removal/supportive measures and to determine the conditions and duration
  - Violation of an emergency removal/supportive measures under school/institutional policy would be grounds for discipline within the student conduct processes, which may include expulsion
Challenge Outcome Notice

- Written notice of the outcome of challenge should be provided with rationale
- The Respondent and Complainant (if applicable) should not assume or act as though any modifications have been made to the terms of the Emergency Removal until such notice is received
- Notification of the outcome is final and cannot be appealed
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