

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](http://www.ncherms.org). 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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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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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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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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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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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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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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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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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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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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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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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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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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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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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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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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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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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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Upcoming Programs:

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



Questions for this Program?

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