

# Training for Title IX



The image displays a grid of 18 hexagons, each containing a different icon. The icons are arranged in a 3x6 grid. The colors of the hexagons are: yellow, orange, blue, green, red, and purple. The icons include: an elephant, a document with a pencil, a knife, a skull, an anchor, a notepad, a coin, a microscope, a brain, a signpost, a skull, a wave, a thumbs up, a microscope, a brain, a signpost, a skull, a wave, and a thumbs up.



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## Violence Risk Assessment (VRA) Standards

### VRA Assessor

1. **Professional/Academic Experience:** Those conducting a VRA should have a degree in psychology, criminology, law enforcement, or similar field. While a terminal degree is aspirational, it is not required for this work. The ability to conduct an interview, mitigate implicit and explicit bias, build rapport, and reduce defensiveness are the minimal skills needed to conduct a VRA. Threat assessment professionals include a variety of psychologically trained counselors, law enforcement officers, federal agents, researchers, and administrators. Those conducting a VRA should demonstrate a reasonable understanding and familiarity across disciplines (legal, psychological, law enforcement, ADA/504, and disability).
2. **Training:** While there is no licensure or credential that universally bestows the expertise to conduct a VRA, there is responsibility for those conducting a VRA to have obtained proper training, knowledge, and practice before conducting these assessments. A detailed knowledge of the standards laid out in this document would be a sufficient starting place for those practicing threat and violence risk assessments. Training must be on-going and continuous. This involves reviewing new threat assessment practices, keeping up to date with new attack strategies, and learning about new areas of expansion in threat (such as incels, white supremacist threats, and Covid-19 rage). Keeping skills sharp related to changes in social media, closed community language, and advances in technology and assessment techniques should occur frequently.
3. **Dual Relationships:** When conducting a VRA, the assessor should not have a significant personal relationship, clinical treatment relationship, power/authority relationship or other conflicting role related to privilege of communication or potential criminal charges/conflicts. In these instances, the VRA professional should recuse themselves from the assessment unless measures can be put into place (appeal process, secondary conduct review) to mitigate the conflict. This may be done if there are limited resources, the VRA is occurring in more remote, rural setting and if the recusal would cause an adverse action to the subject of the VRA.
4. **Bias Mitigation:** Every person has some form of bias. This bias can be explicit or implicit. Explicit bias is what we are aware of and often includes our political affiliations, religion, socioeconomic status, career background, sexual orientation, gender identity, race, and ethnicity. At a minimum, those conducting a VRA should be able to discuss the impact of a potential confirmation bias, in/out group bias, the halo effect, experience, and availability bias. This mitigation should also include developing and nurturing a sense of cultural competency to encourage accurate gathering of data.
5. **Structured Professional Development:** This process stresses the importance of an evidenced-based risk analysis based on the assessment of risk and protective factors, a non-actuarial estimation of risk with a strong focus on the management of threat and violence over time, rather than a singular focus on one assessment.

### Process

6. **Define Scope of Assessment:** The assessment should be clearly defined at the start of the process. There are times when a VRA becomes intertwined with a fitness for duty, mental health or psychological assessment, stalking, domestic violence, or inpatient admission. The VRA assessor should clearly identify the purpose of the assessment and what process the results will be used to inform.
7. **Evidenced-Based:** While there are often outside pressures (such as expectations from the college president, workplace CEO, or board of trustees) and challenges (such as time pressures, lack of resources, or incomplete information) during the VRA process, the assessor has to stay focused on an evidenced-based assessment built upon a full, contextual analysis. This evidence-based best practice should inform the VRA and the subsequent report. The assessor should assess the potential for escalations down a pathway of violence based on current research and literature.
8. **Understand the Limits of Psychological Assessment:** While there are times a psychological or mental health assessment can add to a VRA, the psychological assessment is not the same as a VRA. A psychological assessment focuses on diagnoses, imminent risk of danger to self/others (which often is part of an in-patient admission), medication referral, and outpatient treatment. Very few practicing psychologists, licensed professional counselors, or psychiatrists, have been trained, as a matter of practice, to assess for tar-

geted violence potential. In other words, it should not be assumed that a licensed clinician can conduct a VRA because of the existence of their license and graduate training. Anyone conducting a VRA should be vetted to ensure they have the qualities outlined in these standards.

- 9. Assessing Contextual Data:** A key element to any VRA is prioritizing the subject of the assessment and gathering close, rich and expansive contextual information regarding the scenario in question. This includes assessing past behavior, social media, and other sources of data that may deepen the accuracy of the assessment.
- 10. Threat Management not Just Assessment:** Keeping an eye to management rather than merely assessment is an essential part to any quality VRA. This means attending to questions of “what happens next” after the risk and protective factors have been weighed and the initial set of interviews is completed. A VRA must take into account future actions and variables. Likewise, any treatment or management measures should be proportional in response to the behaviors.

## Terminology

- 11. Understanding Affective vs. Targeted Violence:** During a VRA, an understanding of the differences between affective, adrenaline-based violence and violence built upon injustices, past grievances, and mission-oriented planning is necessary. While both types of violence are concerning, research and case analysis has highlighted the importance of addressing the targeted violence or mission-oriented pathway as critical in the prevention of mass attacks.
- 12. Research-Based Risk Factors:** There are numerous risk factors for targeted and instrumental violence that have been studied by researchers in criminology, psychology, and forensics. The National Threat Assessment Center, Department of Education, U.S. Secret Service, U.S. Postal Service, and Department of Justice provide decades of research related to targeted violence risk. These risk factors should be applied to each VRA. VRAs can use advanced threat assessment expert systems (e.g., WAVR-21, TRAP-18, MOSIAC, SIVRA-35, Looking Glass, ERIS, VRAW2, IIR, NAS) and psychological measures (e.g., MMPI-2, PAI, HCR-20, Hare PCL, Paulus Deception Scale, STAXI-3, SASSI-2) to supplement their assessment and support their conclusions.
- 13. Research-Based Protective/Anchor Factors:** In addition to understanding the risk factors for targeted violence, those conducting a VRA should also understand the stabilizing influences in the subject’s life. This scaffolding is critical to assess during the VRA; balancing risk and projective/anchoring factors to develop a threat management mitigation plan.
- 14. Understanding Variableness of Threats:** Those conducting VRAs should have proficiency in assessing the various types of threats that occur within a VRA. These include transient and substantive threats, hunting and howling, affective and mission-oriented, indirect/vague and direct with and without an action/time imperative, conditional and non-conditional ultimatums.
- 15. Assessing Truthfulness:** In the literature and research base surrounding deception, credibility assessments, truthfulness, and validity, it is essential that the person conducting the VRA have a detailed awareness of the limits of these techniques (such as biofeedback, micro expressions, cognitive load, hotspots, and the polygraph). An understanding of how to address impression management through rapport building is a key element to access information that the subject may initially be unwilling to share.

## Procedures

- 16. Collaborative Team Process:** A VRA is done best when it involves a collaborative, multi-disciplinary team approach. This can be within a behavioral intervention, CARE or threat assessment team model. This collaborative approach reduces silos of information, expands the contextual analysis and brings together expertise in the law enforcement, psychological, legal, student conduct, human resources, and disability/IEP services.
- 17. Informed Consent:** While there may be a temptation to hide the nature of the interview, VRA professionals need to be clear and upfront with the subject. This means discussing with the subject beforehand what the purpose of the interview is and who the results of the interview will be shared with after it is completed. This requires an awareness of applicable laws and guidance such as FERPA, HIPAA, privilege, confidentiality, duty to warn (Tarasoff), Title IX, ADA/504, and the Cley Act.



- 18. Documentation:** The VRA process should be documented in a timely, easy to read and consistent manner. VRA write ups should be provided to both the referral source and the subject being assessed. Reports should avoid jargon, create clarity in the process, and identify next steps. Reports should be useful for the referral source in making future decisions but should not be used as a single source document for separation or expulsion.
- 19. Meeting Logistics:** It is preferable to meet face to face rather than conducting an assessment by distance over a telephone or computer. If the assessment must be conducted by distance, the communication should be made through secure and private channels. Any recording should be clearly stated prior to starting the VRA. Ideally, a single interviewer is used during a VRA to reduce the defensiveness of the subject. If a second assessor is used, this should only be done in matters of safety, quality assurance, or as a training process to increase available VRA staff in the future. The frequency and length of meetings depends on the type of VRA case. If logistics allow, a follow up meeting to resolve any lingering questions after the initial meeting would be an aspirational goal.
- 20. Recording & Cost:** Ideally, the VRA process is not recorded by audio or visual means. If there are reasons to record the session (e.g., required by agency, seriousness of VRA script), then this should be clearly stated to the subject prior to the VRA beginning and permission should be secured. Any money paid to the person conducting the VRA should be agreed upon prior to the start of the VRA. Any additional cost such as psychological tests, should be discussed prior to the VRA.

## Terminology

### Risk Factors

Many researchers have discussed the various risk factors related to targeted violence. These have included the Federal Bureau of Investigations<sup>1</sup>, National Center for Threat Assessment<sup>2</sup>, The U.S. Post Office<sup>3</sup>, National Behavioral Intervention Team Association<sup>4</sup>, and the Association of Threat Assessment Professionals<sup>5</sup>. Some of these are listed here below:

Direct threat	Indirect threat	Lack mental support	End of a relationship
Access to weapons	Lack of peer support	Explosive reactions	Inability to date
Hardened thoughts	Lack of family support	Intimidates others	Hopelessness
Social isolation	Loss of job	Lacks empathy	Last act behavior
Victim of bullying	Decline in academics	Polarized thoughts	Legacy token
Substance abuse	Acquiring weapons	Glorifies violence	Feeling persecuted
Authority conflict	Suicide attempt	Lacking remorse	Leaking attack plan
Fixation on target	Focus on target	Action plan for attack	Timeframe for attack
Fantasy rehearsal	Rejection	Financial loss	Catalyst event
Feeling trapped	Poor anger outlets	Fame seeking	Objectification/Depersonalization

A key aspect of understanding risk factors is the importance of seeing these in combination, like puzzle pieces coming together to create a larger meaning. As with a puzzle, one piece alone is not particularly useful. It's when these pieces combine that the factors begin to be more useful in understanding risk.

### Protective Factors

When conducting a threat assessment, it is essential to balance risk factors against the protective factors that exist for an individual. These protective factors often "take the temperature down" regarding the concerns<sup>6</sup>. Some of these factors are included below:

Social support	Empathy to others	School engagement	Religious supports
Family support	Perspective taking	Work engagement	Non-violent outlets
Positive future view	Intimate relationship	Positive self-esteem	Problem solving
No weapon access	Sense of identity	Consequence aware	Emotional stability
Social/political safety	Housing stability	Resiliency	Lacks reactivity

### Leakage

Leakage is the communication to a third party of intent to do harm<sup>7</sup>. BIT team members have opportunities to detect leakage concerning a potential attack during an initial interview. Team members should be aware that violence is rarely spontaneous. Those who act violently take time to rehearse and fantasize about violent acts. This presents an opportunity for others to overhear or observe potential leakage that could then be used to prevent an attack. The presence of this kind of leakage prior to an attack gives evidence to support the idea that those who plan this kind of mass casualty violence often plan, fantasize, and talk about the event prior to an attack. This offers an opportunity to discover this leakage and thwart the potential assault<sup>8</sup>.

### Silo(ing)

Siloing occurs when departments or individuals hold onto information in isolation, without working collaboratively. These isolated communications occur when each department focuses on their own individual mission, policy, and rules without seeing themselves as part of a larger, more complex system. Communications that focus primarily on a single department to the detriment of seeing threat assessment

and behavioral intervention as larger, community-based approaches are said to be operating in a “silo.” Much like the tall grain silos that are spotted throughout the Midwest, they are single structures serving their function, separated from the larger overall system. Researchers further define this danger: “there is always the risk of a ‘silo effect’ — different domains of behavior are never linked together or synthesized to develop a comprehensive picture of the subject of concern, conduct further investigation, identify other warning behaviors, and actively risk-manage the case.”<sup>9</sup>

## Catalyst Event

A catalyst event is an event in the subject’s life that involves a sense of stark change. Some examples would include the death of a parent, the loss of a job, chronic illness, losing a position in an academic program, not making the cut for a sports team, suspension or expulsion from school, failing a pledge to a fraternity or sorority, police charges, or loss of an intimate relationship. The danger here is the idea that the catalyst event becomes the match to a pool of gasoline, accelerating the movement towards violence.<sup>10</sup>

## Legacy Token

Legacy tokens are writings or media content prepared by a perpetrator prior to an attack that are typically designed to be found following the attack as a way to share a message. The legacy token is a manifesto, written text, online blog, video project, piece of art, diary, or journal created prior to an attack and left for someone to find after the attack. It clarifies the motives of the attacker or better defines the attacker’s message of infamy. A legacy token merits study by those involved in violence prevention because it can help them be better prepared to engage others who intend to harm.<sup>11</sup>

## Costuming

Costuming is the process of creating a persona or mask that defines or hides the true identity of those planning violence. There are two explanations for the type of clothing and accessories mass shooters choose. First, this is an individual who is dressing tactically to complete a mission. Few retailers sell tactical vests, knee pads, thigh rigs, and harnesses offer colors in red, pink, or yellow. Choices are more typically black, olive drab, and camouflage. Colors and styles are designed to allow wearers to have easy access to their weapons, as well as to blend into surroundings. Shooters choose these items for similar reasons. The second reason shooters outfit themselves in this style of tactical gear is more psychological in nature. Meloy refers to this as identification warning behavior. “Identification warning behavior is any behavior that indicates a psychological desire to be a ‘pseudo-commando’ have a ‘warrior mentality’<sup>12</sup>, closely associate with weapons or other military or law enforcement paraphernalia, identify with previous attackers or assassins, or identify oneself as an agent to advance a particular cause or belief system.”<sup>13</sup>

## Zero-Tolerance Policies

These zero-tolerance policies refer to a straightforward separation based on a single incident of weapons possession or violent threat/rhetoric. Simply separating a subject from school or work under the authority of a zero-tolerance policy creates the potential to take an upset, frustrated individual and escalate them into a rage-filled and potentially vengeful attacker. Careful assessment, intervention, and monitoring are the tools that are most effective in mitigating threats of violence in the community. While separating a subject from campus or work may give an illusion of safety, there are numerous examples where angry, disgruntled, and disempowered individuals came back to campus or the workplace to seek their revenge. O’Toole writes, “In a knee-jerk reaction, communities may resort to inflexible, one-size-fits-all policies on preventing or reacting to violence.”<sup>14</sup> The FBI writes, “Do not rely on expulsion, except as a last resort and unless absolutely necessary to ensure campus safety; authorities should avoid the temptation to simply expel students of concern to quickly resolve a risk. Isolated from other contingency and safety planning, this strategy sometimes can worsen matters. The final humiliation of expulsion may serve as a precipitating, or triggering, stressor in the subject’s life and propel the marginalized and hostile individual toward violence.”<sup>15</sup>

## Hardening the Target

Target hardening is the process of making a target more difficult to attack. This occurs when buildings create a single point of entrance, use closed circuit television cameras (CCTV), build reinforced doors, install automatic locks, create sign in/sign out policies, or have armed School Resources Officers (SROs). Many attackers have shown in their journals that they are specifically considering these factors when carrying out an attack. This was evidenced in James Holmes’ journal at the Colorado movie theatre attack and then more recently in the El Paso shooters manifesto, which stated: “Attack low security targets. Even though you might out gun a security guard or police man, they

likely beat you in armor, training, and numbers. Do not throw away your life on an unnecessarily dangerous target. If a target seems too hot, live to fight another day.”

## Objectification and Depersonalization

Distancing oneself from a target is a common technique used to avoid any lasting emotional connection that might distract from completing the mission at hand. Objectification and depersonalization are risk factors, as they allow the aggressor to dehumanize the intended victims. The seeing of another as separate from oneself is one of the building blocks necessary prior to carrying out a rampage shooting or other extreme violent event.

## Weapons

The following is a short list of some common weapons. Familiarizing yourself with these would allow you to better understand weapons commonly used in attacks. This is not a definitive list, but rather a starting place for those without firearm experience.<sup>17</sup>

- ▶ **Glock handgun.** This weapon is commonly seen as a streamlined and modern handgun capable of holding 17 bullets in a standard sized magazine. The gun can have different calibers, such as 9mm, 10mm, .40 caliber, and .45 caliber. Generally speaking, the 9mm caliber is the smallest and cheapest to purchase. This handgun is commonly used at the shooting range and are easy to maintain.
- ▶ **Sig Sauer.** A German-made handgun known for its efficient design.
- ▶ **Smith & Wesson.** This weapon is most commonly a revolver known for its reliability and American-made status.
- ▶ **Colt Python.** A popular revolver in the *Resident Evil* video game series and the *Walking Dead* TV series. While it only holds six bullets, it is valued for its accuracy and stopping power.
- ▶ **Desert Eagle.** An Israeli-made handgun that is available in a .50-caliber round. This gun was made popular because of the enormous kick it gives when fired. The gun is also popular in the *Call of Duty* video game series.
- ▶ **FN P90.** This is a bull-pup style carbine that fires expensive ammunition. It was made popular in the movie *StarGate* and the *Call of Duty* video game series. The rifle is very recognizable due to its compact size and high magazine capacity of 50 rounds laid out across the top of the rifle. The FN pistol uses the same ammunition and was the weapon of choice by Major Hasan, the psychiatrist who killed 13 and injured 29 in the 2009 Fort Hood shooting.
- ▶ **AR-15.** A rifle made popular following several of the recent large school and movie theatre shootings— at Newtown, Connecticut by Adam Lanza, and James Holmes at the Aurora, Colorado movie theatre. It is often the subject of debate between gun enthusiasts and those looking to reduce access to firearms in the United States.
- ▶ **Crossbow.** This weapon has been made more popular following the TV series *The Walking Dead* by one of the lead characters, Darryl. It is also featured on many of the *Call of Duty* video games and is seen as a more elegant way to kill opponents with skill rather than the power of traditional weapon.
- ▶ **E0tech.** This company manufactures a high-quality set of optics and holographic weapon sites that are used in many popular TV shows, movies, and video games.
- ▶ **Hollow-Point Bullets.** These used to be known as “cop-killers” because of their wound pattern and tendency to break up into smaller projectiles upon impact.
- ▶ **Airsoft.** Hobbyists who play intricate military games use these toy guns frequently. The guns are popular with teenagers and young adults.

## Explosives

The following is a list of common concepts and terminology that are useful for BIT team members to have an awareness of when interviewing a subject. This is not meant to be a comprehensive list and certainly does not reflect any expertise in chemistry or explosives.

- ▶ **C4.** This is a military-grade plastic explosive used for its relative stability. Frequent media references to this make it a commonly-known explosive, even though its availability is highly restricted.
- ▶ **Radio Controlled “RC” Car.** Related to C4 and made popular in the *Call of Duty* video game, where radio control cars are strapped with C4 explosive and a video camera. They are available to the player to drive around and “explode” when triggered.
- ▶ **The Anarchist Cookbook.** Popular in the 1970s, the cookbook contains information about how to make bombs, illegal drugs, and ways to subvert the phone company. Made available on the Internet, it has been downloaded and studied by several involved in bombing attacks and school assaults.

- ▶ **Pressure Cooker Bomb.** This is a method of creating an explosive device using a pressure cooker, shrapnel, and an explosive charge. It's a low-tech, low-cost method of creating an explosive device, and was made popular by the April 2013 Boston bombing.
- ▶ **Dirty Bomb.** This is a bomb made with some kind of radioactive material designed to contaminate a larger area. The concept was made popular by many TV shows, movies, and video games.
- ▶ **Pipe Bomb.** This is a small, contained explosive made out of a plumbing or PVC pipe. Similar to a pressure cooker bomb, basic materials may be found at hardware stores and fireworks outlets.
- ▶ **Little Cricket.** These bombs were used during the Columbine attack and are made from CO2 cartridges, explosives, and fuses. They may be mentioned by those who study past attacks and seek to copy-cat previous assaults.

## Affective & Predatory Violence

There are two different primary types of violence that BIT team members will encounter: affective and predatory violence. Meloy writes, "It is generally agreed that violence is either affective or predatory. Affective violence, sometimes referred to as reactive, impulsive, or emotional violence, is preceded by autonomic arousal, caused by a reaction to a perceived threat, and accompanied by intense feelings of anger and/or fear. It is a defensive violence, and its evolutionary basis is self-protection to live another day... Predatory violence, sometimes referred to as instrumental or premeditated violence, is characterized by the absence of autonomic arousal and emotion, the absence of an imminent threat, and planning and preparation beforehand. It is offensive violence, and its evolutionary basis is hunting for food to live another day."<sup>18</sup> The difference is described below.

### Affective Violence

Affective violence is the result of a progressive, biologically driven path towards physical violence. It is poorly planned and a reaction to environmental stressors. Affective violence is based upon the primal instinct of fight or flight, fueled by adrenaline and characterized by someone losing control and ultimately attacking a victim. Howard describes it this way: "A potential aggressor channels his appraisal into some form of coping. The strength of the reaction is a direct function of the validation of the threat and the degree of certainty that the threat will thwart an objective or a goal. It is the emotion of being threatened and the inability to cope with that threat that initiates aggression. The common thread throughout this process is the release of adrenaline."<sup>19</sup>

Grossman and Siddle have conducted landmark studies looking into how aggression can induce adrenaline's (or epinephrine's) influence on the heart rate, body language, behavior, and communication.<sup>20</sup> The adrenaline rushing through a subject's system has also been well studied by Hart.<sup>21</sup> He illustrates that when an individual cannot cope with their anxiety, their mind perceives this anxiety as a threat. As the individual starts to produce adrenaline, this triggers the affective violence response.<sup>22</sup>

### Predatory Violence

Predatory violence, in its extreme form, is described as an intent-driven, planned attack. This aggression occurs when a subject becomes isolated, disconnected, lacks trust, and often feels threatened and frustrated by a perceived attack. They plot and plan their revenge and execute their plans with a militaristic, tactical precision.<sup>23</sup> This violence is a result of a planned, intent-driven action that is more commonly exhibited by a subject engaging in mission-oriented, instrumental violence such as a mass shooting.<sup>24</sup> Predatory violence involves a more strategic, focused attack and a desire to complete a mission.

### The NaBITA Model of Predatory Violence

The NaBITA approach shows this type of aggression moving through four stages: empowering thoughts, escalating behaviors, elaboration of threat, and the emergence of violence.<sup>25</sup>

1. **Empowering Thoughts:** The individual feels a strong passion about a particular belief, while filtering out information that doesn't line up with their beliefs. Common examples include religion, politics, academic expectations, social justice, or relationships. There are no threats or specific targeted individuals identified at this phase. These beliefs may be demonstrated by social media posts or wearing



inflammatory articles of clothing.

2. **Escalating Behaviors:** The individual at this level begins to argue and confront others around them in harmful debate with an intent to polarize. Here, being right supersedes the facts, and they seek to impose their beliefs on others or encourage common cause. They frequently engage in confrontations with others as a result. The individual finds their previous arguments and discussions unsatisfactory and begins to storm off or become aggressive when challenged. This leads to an increase in non-verbal behaviors, which communicate their frustration and anger. There is a move away from debate and dialogue and a move toward further objectification and depersonalization. This may include the use of signs and posters, social media posts, and passive-aggressive behavior.
3. **Elaboration of Threat:** Here, there is a crystallizing of a target and a fixation and focus on an individual, group, department, or organization. They find others who support their beliefs by joining groups or clubs, organizations, teams, reading books, or accessing online resources. They seek to confirm their ideas and find ways to intimidate and confront others beyond verbal arguments. There is a shaming or embarrassing of the target and a desire to unmask them in the community. There is further objectifying and depersonalizing of the target's feelings, thoughts, and actions. They may challenge the target with a "do this or else" conditional ultimatum. There may be a threat of punishment if the target does not comply with the threats and demands. Threats are infused with credibility, but there is rarely physical violence at this stage, and only an increase in threatening language or leakage of plan details.
4. **Emergence of Violence:** The early stage of this phase can involve test runs at carrying out the attack plan on the target or a substitute target. These may include destroying the target's possessions, invasive monitoring of their family, friends, or social circle, or gathering information to better harm the target. Intentional leakage is rarer at this stage than in Level 3 (Elaboration of Threat) but may occur inadvertently, as the preparation behavior for the final step on the pathway to violence is observed by others despite efforts to keep it covert. As the planning moves forward, the attacker increasingly uses militaristic and tactical language, developing strategies to carry out their plan. They are often full of hopelessness, desperation, and suicidal thoughts, and have a sense of inevitability related to their attack plan. Detaching from meaningful relationships, giving away prized possessions, extremely flat affect, or warning some people away from the target are abstracted forms of leakage that may characterize this stage. They justify their violence based on their hardened perspective.

## The Meloy Model of Predatory Violence

Meloy defines these stages through these approach behaviors. These are: fixation, identification, novel aggression, energy burst, leakage, last resort, and directly communicated threat.<sup>26</sup>

1. **Fixation Warning Behavior** – any behavior that indicates an increasingly pathological preoccupation with a person or a cause. It is measured by:
  - ▶ increasing perseveration on the person or cause;
  - ▶ increasingly strident opinion;
  - ▶ increasingly negative characterization of the object of fixation;
  - ▶ impact on the family or other associates of the object of fixation, if present and aware; and/or
  - ▶ angry emotional undertone.

It is typically accompanied by social or occupational deterioration.

2. **Identification Warning Behavior** – any behavior that indicates a psychological desire to be a "pseudo-commando," have a "warrior mentality," closely associate with weapons or other military or law enforcement paraphernalia, identify with previous attackers or assassins, or identify oneself as an agent to advance a particular cause or belief system.
3. **Novel Aggression Warning Behavior** – an act of violence that appears unrelated to any targeted violence pathway warning behavior committed for the first time. Such behaviors may be used to test the ability of the subject to actually do a violent act, and may be a measure of response tendency, the motivation to act on the environment, or a behavioral tryout.
4. **Energy Burst Warning Behavior** – an increase in the frequency or variety of any noted activities related to the target, even if the activities themselves are relatively innocuous, usually in the days or weeks before the attack.

5. **Leakage Warning Behavior** – the communication to a third party of an intent to do harm to a target through an attack.
6. **Last Resort Warning Behavior** – evidence of a violent “action imperative,” increasing desperation or distress through declaration in word or deed, forcing the individual into a position of last resort. There is no alternative other than violence, and the consequences are justified.
7. **Directly Communicated Threat Warning Behavior** – the communication of a direct threat to the target or law enforcement beforehand. A threat is a written or oral communication that implicitly or explicitly states a wish or intent to damage, injure, or kill the target, or individuals symbolically or actually associated with the target.

## Structured Professional Judgment

Hart, a proponent of using structured professional judgment and co-author of the HCR-20, a violence risk assessment tool, offers an outline to understand the process of threat assessment focused on the needs of the individual, case management, and a detailed discussion of clinical formulation.<sup>27</sup> Hart’s work moves away from prediction models and instead illustrates the potential exacerbating factors that could cause violence, as well as those inhibiting factors that reduce violence risk. The structured professional judgment process can be outlined in seven steps: gather information, determine the presence of risk factors, determine the relevance of risk factors, develop a good formulation of violence risk, develop scenarios of violence, develop a case management plan based on those scenarios, and develop conclusory opinions about violence risk. For a more detailed look at SPJ, chapter three in *Harm to Others* walks readers through the process.<sup>28</sup>

## Hunters and Howlers

Calhoun and Weston (2009) wrote a seminal book on threat assessment called *Threat Assessment and Management Strategies: Identifying the Howlers and Hunters*.<sup>29</sup> Their central premise is that those who plan to attack don’t always communicate this in advance. They write: “Threat management involves managing two very different types of individuals. One group consists of hunters. They truly intend to use lethal violence to aggrieve some perceived injustice. Hunters develop a reason for committing violence, come up with the idea to do so, research and plan their attack, prepare for it, then breach their target’s security and actually attack. Whatever their reason, those who intend to act violently go through the process of intended violence.”

Most direct communicated threats do not lead to violence. Calhoun and Weston make this point: “Writing letters is easy; shooting someone or setting him on fire presents a considerably more difficult challenge.” While this is accurate, it remains important to explore the contextual risk factors related to the specific case at hand. The challenge is to determine whether a violent or threatening behavior is simply a bad decision on the part of the subject, or if the threat of violence is the proverbial “tip of the iceberg,” exposing deeper plans that may lead to a more dangerous event occurring in the future.

Although direct threats often do not lead to violence, there must be a diligence in the assessment process. The FBI explains it this way: “Unlike disruptive and other forms of aggressive behavior, violent or directly communicated threat always requires immediate investigation and evaluation... While most communicated direct threats do not end in violence, this can only be determined after directly questioning and assessing the student in question.”<sup>30</sup>

## Understanding & Mitigating Bias

Bias is our tendency to see the world from our particular lens of experience. It can lead us to ignore the evidence or make assumptions not based on evidence. It can impact what we remember and what witnesses remember. It can create blinders for BIT team members and im-

part their ability to build rapport, connect, and create safe/neutral spaces. While we can never remove bias, we can train to make us more aware of how bias can affect decision making.

## What is Bias?

- ▶ A preference or tendency to like or dislike; a cognitive process
- ▶ A habit learned over time through repeated personal experience
- ▶ Implicit or expressed
- ▶ Can be intentional, but generally unintentional
- ▶ Formed from stereotypes, societal norms, cultural experiences, and expectations of the people around you

## Type of Bias

- ▶ **Confirmation Bias:** Form an early hypothesis and tend to seek or overvalue evidence that fits it or confirms it. Are you interviewing or validating?
- ▶ **Experience Bias:** The tendency to see the world from your own experience.
- ▶ **Responsibility Bias:** The tendency to assume people should be responsible for themselves.
- ▶ **In Group/Out Group:** The tendency to be favorable toward the group that is similar to you.
- ▶ **Blind Spot:** Ability to spot systematic errors in others' decisions.
- ▶ **Availability Bias:** Reliance upon readily available (most recent) information.

## Where does bias come from?

- ▶ Gender, gender identity experiences, and sexual orientation
- ▶ Race/ethnicity, world view, and generational expectations
- ▶ Mental illness or physical disabilities
- ▶ Different cultures or geographic areas
- ▶ Veteran history; and religious or political experiences
- ▶ Economic differences; and friend or peer groups

## Assessing Truthfulness

It is often difficult to know if a subject is being truthful. "Deception, a deliberate attempt to convince someone of something the liar believes is untrue, is a fact of everyday life. Depaulo and her colleagues (1996) asked participants to keep a diary for a week of all their social interactions lasting more than 10 minutes and to note how often they lied during these interactions. Almost all participants admitted that they had lied during the week they kept the diary. They lied in one out of every four social interactions and to more that 30 percent of all the people they interacted with." <sup>31</sup> Lot of things don't work:

- ▶ In ancient China, suspects would be made to chew dry rice while being questioned. When the suspects spat out the rice, they were assumed to be guilty if the grains remained stuck to their tongue. The reasoning was that the stress created by lying would slow saliva flow and cause a dry mouth. It was believed that an innocent person would have no reason to stress under such conditions.
- ▶ Trials by ordeal were a common means of detecting guilt from innocence, although they're widely considered now to be barbaric and violent tests revealing nothing of truth or lies. These were ancient judicial practices in which the accused was subjected to dangerous perils. Death would indicate guilt, and survival suggested innocence.
- ▶ The Bocca della Verità (the Mouth of Truth) is a heavy marble disc carved into the shape of a head and face. It is said to originally represent the Titan god Oceanus, of the great earth-encircling river that feeds all the world's rivers, wells, and springs. Beginning in the middle ages, the disc was supposed to tell truth from lies.

## Terminology

- ▶ **Credibility Assessment:** A credibility assessment determines how believable an individual's prior statements and testimony are. Credibility assessments are used more in legal settings to determine quality of a witness in a proceeding.
- ▶ **Deception Detection:** Deception detection makes use of questioning and observation techniques, along with technology that records physiological functions, to assess the likelihood of truth and falsehood in a subject's story. "In the end, detecting deception is all about honesty." Ekman concludes, "It's much harder to find the truth than to find a lie. A good lie-catcher is good at identifying truthfulness."<sup>32</sup>
- ▶ **Impression Management:** "In sociology and social psychology, impression management is a goal-directed conscious or unconscious process in which people attempt to influence the perceptions of others about a person, object, or event. Impression management is performed by controlling or shaping information in social interactions."<sup>33</sup>
- ▶ **Faking Good:** Faking good is when a subject attempts to distort their true motives by convincing the evaluator that they are better, or respond to questions in a more socially desirable manner. They may do this to convince the evaluator that they are healthy, well adjusted, and have few problems. They may attempt to hide mental health problems, anti-social beliefs, or problems they have with authority or following the rules.
- ▶ **Faking Bad:** Faking bad refers to when a subject attempts to make the evaluator think that the problems they are having are worse than they really are. They may do this in order to receive some kind of accommodation, such as increased time on an exam they are taking, or they may want to convince the evaluator that the reason they made a threat or hurt another person was due to a serious mental disorder, rather than simple anger or recklessness.
- ▶ **Halo Effect:** The halo effect is a bias in which our overall impression of a person (a figurative halo) colors our judgment of that person's character. The research into the halo effect shows that a person's positive qualities, physical appearance, and general attractiveness affects how we judge their character — the better they look and behave, the better a person we judge them to be. Thorndike (1920) conducted an experiment in which soldiers were rated by their commanding officers in terms of their physical qualities (e.g., neatness, energy, and physique) and their mental, emotional, and social qualities (e.g., intellect, leadership, and responsibility). Thorndike found that if one of the soldier's qualities was rated highly, the other qualities tended to also be rated highly, and vice versa. Example: Concluding that a politician who is warm, friendly, and has a great smile would make good decisions.<sup>34</sup>
- ▶ **Cognitive Overload:** Cognitive load refers to the total amount of mental effort being used in the working memory. In the late 1980s, Sweller developed this concept in reference to learning environments. Studies confirm that being deceptive is more cognitively demanding than being truthful.<sup>35</sup> As a result, there is a cognitive overload.
- ▶ **Microexpressions:** Microexpressions are very brief facial expressions, lasting only a fraction of a second. They occur when a person either deliberately or unconsciously conceals a feeling. Ekman's research has revealed that seven emotions have universal signals: anger, fear, sadness, disgust, contempt, surprise, and happiness.<sup>36</sup>

## Why do we lie? To protect:

- ▶ **Ourselves.** Lying often is a way for people to avoid suffering painful consequences, shame, embarrassment, or conflict.
- ▶ **Our interests.** We lie so that we may get material goods (e.g., money) and non-material goods (e.g. attention from the telling of tall tales).
- ▶ **Our image.** We all want others to think well of us, yet we all do things that we ourselves consider less than respectable at times.
- ▶ **Our resources.** We often lie to avoid expending energy or time doing something we really don't want to do.
- ▶ **Others.** Telling people what they want to hear is a way to protect their feelings.<sup>37</sup>

## Friendship = Proximity + Frequency + Duration + Intensity

- ▶ **Proximity** is the distance between you and the another individual and your exposure to the individual over time (think non-threatening environment).
- ▶ **Frequency** is the number of contacts you have with another individual over time.
- ▶ **Duration** is the length of time you spend with another individual over time.
- ▶ **Intensity** is how strongly you are able to satisfy another person's psychological and/or physical needs through the use of verbal and nonverbal behaviors (think curiosity).<sup>38</sup>

## Friend Signals

- ▶ **Eyebrow flash** is a quick up-and-down movement of the eyebrows that lasts about one-sixth of a second (brief and not staring).
- ▶ **Head tilt** to the left or the right is a nonthreatening gesture. This is a strong friend signal.
- ▶ **The smile** should be genuine with upturned corners of the mouth and upward movement of the cheeks accompanied by a wrinkling around the eyes. Insincere smiles tend to be lopsided.
- ▶ **Head nodding** communicates to those speaking that they should keep talking.
- ▶ **Isopraxism** is mirroring a person's body language.
- ▶ **Inward lean** is when people lean toward those they like and away from those they don't.
- ▶ **Verbal nudges** reinforce head nodding and encourages the speaker to continue talking (e.g., "I see," "go on...," "tell me more," etc.).
- ▶ **Focused listening** requires those conducting interviews to not let distractions interrupt their attentive listening.

## Foe Signals

- **Elongated stare** or eye contact that lasts more than a second can be read as aggressive.
- **Body scan/elevator eyes** is a head-to-toe gaze and is often seen as intrusive because the person doing the looking hasn't earned the right to invade the other's personal space.
- **Eye roll** sends the message that you think the individual is stupid and not worth listening to.
- **Eye squinting, furrowed eyebrows, and facial tension** are associated with disapproval, uncertainty, and anger.
- **Conversational bridge back** is used to build rapport and convey a sense that you are attending to the person being interviewed. There is a reference to a prior knowledge set or conversation that establishes past connections and moves the rapport forward.
- **Asking a favor** is used to build rapport and builds on the concept that doing favors for others builds trust and helps the individuals feel good about themselves. (Watch drink example.)

## Threat & Violence Risk Assessment Tools

### NaBITA: Risk Rubric

The NaBITA Risk Rubric is designed to be the initial assessment applied to every case a threat or BIT/CARE team comes across. Following this triage assessment, teams should deploy additional assessments and gather additional data to most effectively assess risk. The NaBITA Risk Rubric gives teams a framework for understanding the risk present in a case and offers possible interventions to reduce the risk. The Risk Rubric is made up of two scales:

1. **The D-Scale:** This scale assesses issues of life stress and emotional health through a series of four progressive levels: 1) Developing, 2) Declining, 3) Deteriorating, and 4) Decompensating. As the levels increase, there are more concerning and serious emotional and behavioral health-related risks, including the potential for affective violence and aggression. The trajectory of this scale is more likely to result in self-harm than in harm to others.
2. **The E-Scale:** This scale assesses issues of hostility and violence to others through a series of four progressive levels: 1) Empowering Thoughts, 2) Escalating Behaviors, 3) Elaboration of Threat, and 4) Emergence of Violence. The levels increase to address more concerning risk factors for targeted/instrumental violence, hostility, and threats to others. The trajectory of this scale is more likely



to result in harm to others than in harm to self, though both risks are present.

Once the overall risk rating of Mild, Moderate, Elevated or Critical is made, the BIT/CARE or threat team moves to develop interventions. The NaBITA Risk Rubric offers a range of risk-based actions that the team should consider. These interventions are based on the level of risk determined in the Overall Summary (Mild, Moderate, Elevated, and Critical), and they are supported by a decade of successful interventions by teams that have followed their roadmap. For an online version of the Risk Rubric, or to access supporting articles, training opportunities and a colorful tri-fold version of the tool, visit [www.nabita.org/tools](http://www.nabita.org/tools).

### **NaBITA: Violence Risk Assessment of the Written Word (VRAW<sup>2</sup>)**

The VRAW<sup>2</sup> was created in 2015 following increasing numbers of cases in which subjects shared concerning written communication through social media, creative writing classes, and over email. The VRAW<sup>2</sup> offers five factors (Fixation and Focus, Hierarchical Thematic Content, Action and Time Imperative, Pre-Attack Planning, and Injustice Collecting) that are then scored to provide a Mild, Moderate, Elevated, or Critical Level of risk, in line with NaBITA Risk Rubric. The VRAW<sup>2</sup> has aided teams in focusing more objectively on the literature related to threat assessment when assessing threatening or concerning writing. The VRAW<sup>2</sup> provides teams with better footing when making decisions about intervention related to written concerns. For an online version of the Risk Rubric, or to access supporting articles and training opportunities, visit [www.nabita.org/tools](http://www.nabita.org/tools).

### **NaBITA: Structured Interview of Violence Risk Assessment (SIVRA-35)**

The SIVRA-35 was created in 2012 as an expert system. It is a structured set of items to use with individuals who may pose a threat to the community. The SIVRA-35 is a guided structured interview useful for classifying risk into Low, Moderate, and High categories based on concepts from existing threat and violence risk assessment literature. The SIVRA-35 was designed to address targeted and strategic violence on college campuses, such as the Virginia Tech massacre and the shootings at Northern Illinois University, Umpqua College, and Santa Monica College, and by enrolled or recently enrolled college students at non-campus locations, such as James Holmes and Jared Loughner. For a foundational online version of the SIVRA-35, or to access supporting articles and training opportunities, visit [www.nabita.org/tools](http://www.nabita.org/tools).

### **NaBITA: Extremist Risk Intervention Scale (ERIS)**

BIT/CARE and Threat Assessment Teams have, with good reason, become increasingly concerned with how to identify the potential for radicalization of students, faculty, and staff. Radicalism and extremism should be viewed on a continuum, from critical or counter-culture thinking to seeing violence as a reasonable pathway to bring about a desired change. The Radicalization Risk Rubric seeks to provide teams with an understanding of what to look for to identify and intervene with at-risk individuals who have radical thoughts and behaviors that are escalating to extremist violence and terrorism. For an online version of the ERIS, or to access supporting articles and training opportunities, visit [www.nabita.org/tools](http://www.nabita.org/tools).

### **Historical Clinical Risk Management-20 (HCR-20)**

The HCR-20, which is in its third version, is a structured professional judgment instrument used to assess risk and develop mitigation plans. The measure is well researched and evidence-based. The authors of the measure explain that risk and threat are always incompletely understood due to the uncertainty inherent in individuals' choices. The HCR-20 is commonly used in psychiatric settings to determine release criteria, admission screenings, and inpatient psychiatric management, as well as to monitor risk in probation and parole settings. The HCR-20 is a process rather than a singular tool producing a quantitative score or measure. The seven-stage process includes: 1) gathering information, 2) identifying the presence of risk factors, 3) determining the relevance of the risk factors, 4) formulation of the motivators for violence, 5) the development of risk scenarios, 6) management, and 7) final opinions. For more information about the HCR-20, visit <http://hcr-20.com>.

### **Workplace Assessment of Violence Risk-21 (WAVR-21)**

The WAVR-21 is a workplace violence risk assessment designed to assist human resource and threat assessment professionals to work through a structured set of dynamic and static risk factors to better estimate the likelihood of violence by an employee. Though designed with a workplace setting in mind, the WAVR-21 offers some guidance to those working in a higher education environment when it comes to identifying potential risks with students, faculty, and staff. For more information about the WAVR-21 visit [www.wavr21.com](http://www.wavr21.com).

## Selected Predatory Violence Cases

**El Paso Shooting.** On August 3, 2019, 21-year-old Patrick Crusius shot and killed 22 people at an El Paso Walmart. He published a white nationalist, anti-immigration manifesto on an internet site (8chan) 27 minutes before the attack. He cited the Christchurch attacker as inspiration. His main worry was around a Hispanic invasion, military imperialism, automation, large corporations, and environmental degradation.

**Christchurch Mosque Shootings.** On March 15, 2019, Brenton Tarrant, a 28-year-old Australian man, carried out two attacks, killing 51 people and injuring 49. The attacker had a history of white supremacy and alt-right leanings. The attack demonstrated detailed planning, and the proficient use of multiple firearms and tactical gear. The attacker livestreamed the attack to Facebook with a go-pro camera. He was captured by police at gunpoint on his way to a third location. Tarrant is allegedly the author of a 74-page manifesto titled “The Great Replacement.”<sup>39</sup>

**Bartow Attack Shooting.** On October 24, 2018, two middle school girls (ages 11 and 12) brought several knives and weapons to school with a detailed plan to kill up to 15 younger classmates in the bathroom. They were apprehended when the school automated attendance system called their parents to report they were not in school. The parents called the school with concerns and the school was placed in lockdown. The girls were found in the bathroom with detailed plans to kill other students, drink their blood, and carve satanic symbols into their flesh. On search of the girls’ cell phones, there was evidence of messages stating plans “to leave body parts at the entrance and then we will kill ourselves.” They conducted internet searches to learn what wounds would cause people to bleed out the fastest. They said they came up with the plan over the weekend after watching horror movies.

**Pipe Bomb Mail Attack.** In late October 2018, Cesar Altieri Sayoc mailed 16 packages containing pipe bombs to critics of Donald Trump. These included Barack Obama, Joe Biden, Hillary Clinton, CNN, and Robert De Niro. While all bombs that were sent were improvised explosive devices, none of them had a trigger mechanism. Sayoc was convicted on 65 felony counts and sent to prison for 20 years on August 5, 2019.<sup>40</sup>

**Santa Fe Shooting.** On May 18, 2018, Dimitrios Pagourtzis shot and killed eight students and two teachers and wounded 13 others before being taken into custody by police. He began shooting at 7:40 a.m. in an art class, saying, “I am going to kill you” and “Surprise!” He told police he wanted to kill the students he targeted and spare those he liked so he could “have his story told.” He used a shotgun and .38 revolver in the attack, along with explosive devices and Molotov cocktails. There were reports the shooter was a victim of frequent bullying by students and coaches. He was on the honor roll and played football. Students reported that he was at the water park the day before and “seemed friendly and funny.” He was described as quiet, and some felt he was a “loner” and “never seemed quite right.” He had posted some concerning content on his Facebook page on April 30, prior to the attack.

**Parkland Shooting.** On the afternoon of February 14, 2018, a former student, Nikolas Cruz, walked into a building at Marjory Stoneman Douglas High School in Parkland, Florida. He situated and armed himself with an AR-15 rifle, pulled the fire alarm, and began shooting at students and teachers exiting classrooms. Approximately six minutes later, after navigating three floors of classrooms while killing 17 people and wounding 17 more, he put his weapon down and exited the building among the chaos he had started. There were numerous opportunities to detect the escalation to the attack. On February 5, 2016, a neighbor’s son told the sheriff’s office that Cruz, pictured with guns on Instagram, “planned to shoot up the school.” A deputy responded, discovered that Cruz owned knives and a BB gun, and informed the high school’s resource officer, Scot Peterson. On September 28, another student informed Peterson that Cruz may have ingested gasoline a week earlier and was cutting himself. In September 2017, A blogger in Mississippi warned the FBI that someone named “Nikolas Cruz” wrote on his YouTube page: “I’m going to be a professional school shooter.” On November 1, 2017, Katherine Blaine told the sheriff’s department that her cousin, Nikolas’ mother, recently died. She said Cruz had rifles and requested that the agency recover them. A close family friend agreed to take possession of the weapons. On November 30, 2017, a caller told the sheriff’s department that Cruz was collecting guns and knives and “could be a school shooter in the making.” On January 5, 2018, a person close to Cruz contacted the FBI’s tipline to report concerns about him, including his possession of guns.<sup>41</sup>

**Sutherland Springs Church Shooting.** On November 5, 2017, Devin Patrick Kelley killed 26 people and wounded 20 others at the First

Baptist Church. Kelley was not allowed to purchase a firearm due to a domestic violence conviction and court martial from the Air Force. He died from a self-inflicted gunshot wound.

**Las Vegas Concert Shooting.** On October 1, 2017, 64-year-old Stephen Paddock opened fire on a crowd attending the Route 91 Harvest Music Festival, killing 58 people and wounding 422. He fired more than 1,100 rounds of ammunition from his suite at the Mandalay Bay Hotel on the Las Vegas Strip. He died from a self-inflicted gunshot wound. An FBI report found inconclusive motives for the attack, yet suggested that, “as he grew older, Paddock became increasingly distressed and intolerant of stimuli while simultaneously failing to navigate common life stressors affiliated with aging.” And, “once Paddock decided to attack, he characteristically devoted time, attention, and energy to the shooting. Paddock engaged in detailed preparations for the attack, including a year-long burst of firearms and ammunition acquisition.”<sup>42</sup>

**Freeman High Shooting.** On September 13, 2017, Caleb Sharpe flipped a coin that came up heads and he entered his school with an AR-15 and a handgun in a duffel-bag. The AR-15 jammed, and he used the handgun to shoot a fellow student, who was trying to stop the shooting. Caleb continued to shoot down the hall and then surrendered to a custodian. He told detectives that he wanted to “teach everyone a lesson about what happens when you bully others.” Around the time classes started at the high school, Caleb gave notes to several friends indicating plans to do “something stupid” that might leave him dead or in jail. One of those notes was reportedly passed on to a school counselor. He also bragged to several friends when he figured out the combination to his father’s gun safe, and again when he learned to make bombs out of household materials. He acted out violent scenarios on his YouTube channel and spoke openly about his fascination with school shootings and notorious killers like Ted Bundy. He messaged a friend over Facebook, asking if the friend could get him gasoline, tinfoil, and fuses. The friend reported “I said, ‘No,’ and asked him why. He said, ‘For a science experiment.’ I said, ‘Why are you doing a science experiment?’ and he said, ‘Nevermind.’”

**Portland Light Rail Attack.** On May 26, 2017, Jeremy Joseph Christian allegedly started yelling what “would best be characterized as hate speech toward a variety of ethnicities and religions” toward two women in a Metropolitan Area Express (MAX) light-rail train, according to police. Several passengers tried to intervene, and he fatally stabbed two people and injured a third. A self-described white nationalist, Christian left behind many social media posts and clues to his reactive attacks towards Muslims. There is video of him at protests being rejected by alt-right groups and carrying a baseball bat.

**Charleston Church Shooting.** In June 2015, gunman Dylann Roof shot and killed nine people at a church service at the Emanuel African Methodist Episcopal Church in Charleston, South Carolina.<sup>43</sup> Roof became radicalized in his beliefs concerning white supremacy after the Trayvon Martin shooting in Florida in 2012. Roof had two prior arrests and convictions on felony drug counts that should have prevented him from purchasing the firearm used in the attack.<sup>44</sup> The FBI reports that Roof was self-radicalized in his beliefs and was not connected to a larger terrorist group. Prosecutors in the case argued that Roof believed, “that violent action is necessary to fight for white people and achieve white supremacy and that the choice of targets and execution of violent action should be conducted in a manner that promotes these objectives, to include publicizing the reasons for those actions to inspire others to engage in violent action to further white supremacy.”<sup>45</sup> Roof studied black-on-white crime and created a website and manifesto discussing white supremacy. He viewed this attack as a trigger for a future race war. Roof, a ninth-grade dropout, wrote, “I have no choice.” He stated as part of the final section, titled “An Explanation,” “I am not in the position to, alone, go into the ghetto and fight. I chose Charleston because it is [the] most historic city in my state, and at one time had the highest ratio of blacks to Whites in the country.”<sup>46</sup>

**San Bernardino Shooting.** In December of 2015, Syed Rizwan Farook and Tashfeen Malik, a married couple from California, attacked an 80-person Christmas party at the San Bernardino County Department of Public Health. Syed was an American-born citizen of Pakistani decent, and Tashfeen was a Pakistani-born legal U.S. resident. The couple fled after the shooting and were killed by police. Per the FBI, the couple had been stockpiling weapons, ammunition, and bomb-making material; had visited many websites related to jihadism and martyrdom; and had traveled to Saudi Arabia before the attack. They had been planning an attack as early as 2011, and it is believed the mandatory attendance at the company Christmas party was a catalyst for the event.<sup>47</sup> In the weeks before the attack, they acquired a \$28,000 loan believed to help fund the attack.

**Las Vegas Police Shootings.** On June 8, 2014, in northeastern Las Vegas, Nevada, Jerad and Amanda Miller killed three people in an anti-government attack.<sup>49</sup> The couple killed two police officers at a restaurant and fled to a nearby Walmart, where they shot and killed a

civilian. Jerad was shot by the police and Amanda committed suicide. Jerad had previous arrests for drug charges. On the day of the attack, Jerad had multiple posts on social media about distrusting police officers and law enforcement. He posted on Facebook the day of the attack, “The dawn of a new day. May all of our coming sacrifices be worth it.”<sup>50</sup> On June 2, he posted on Facebook, “We can hope for peace. We must, however, prepare for war. We face an enemy that is not only well funded, but who believe they fight for freedom and justice. Those of us who know the truth and dare speak it, know that the enemy we face are indeed our brothers. To stop this oppression, I fear, can only be accomplished with bloodshed.”

**Downtown Austin Shootings.** At 2:00 a.m. on November 28, 2014, Larry Steve McQuilliams started firing shots at a Mexican consulate, a federal courthouse, and a bank in Austin, Texas.<sup>51</sup> He was trying to set fire to the consulate when he was shot dead by the police. McQuilliams had “let me die” written in marker across his chest. There were no other fatalities. Police searched his rental van and found homemade bombs made from propane cans, a map containing 34 targets, and a white supremacist book called “Vigilantes of Christendom.” There was no clear motive or manifesto left, but McQuilliams moved to shoot up the Mexican Consulate shortly after President Obama issued his executive order regarding immigration, so this order was believed to be the motive for the shootings. He had a history of aggravated robbery arrests in the past.

**Orlando “Pulse” Shooting.** In June of 2013, Omar Mateen killed 49 people and wounded 53 in a gay nightclub in Orlando. Mateen claimed the attack for Islamic State in Iraq and the Levant (ISIL), and claimed it was revenge for the killing of ISIL militant Abu Waheeb the previous month. He purchased two firearms legally in the weeks before the attack. During the attack, he posted on Facebook, “I pledge my alliance to (ISIS leader) Abu Bakr al Baghdadi. May Allah accept me,” “You kill innocent women and children by doing us airstrikes. Now taste the Islamic state vengeance,” and “In the next few days you will see attacks from the Islamic state in the USA.”<sup>52</sup> Mateen was previously a prison guard who was terminated for joking about bringing a gun to work. He unsuccessfully tried to become a state trooper in 2011 and failed to gain admission into the police academy in 2015. He was a security guard before the attack. There are reports that he had a history of being mentally unstable, physically abusive, and was a long-time steroid user. He often used slurs, and those who worked with him as security guards shared that he had a lot of hatred for people — black people, women, Jews, Hispanics, and gay or lesbian people.<sup>53</sup>

**Freedom High Attack (Averted).** On August 18, 2011, Jared Cano was arrested for planning an attack at his high school. Cano was expelled from Freedom High School in 2009, and planned an attack that was stopped after an anonymous tipster notified the police. He had a history of drug charges and burglary. Police found fuel, shrapnel, plastic tubing, timing and fusing devices for making pipe bombs, along with marijuana and marijuana cultivation equipment. They also found a detailed journal with statements about killing specific administrators and students who may be in the vicinity of his attack, as well as detailed schematics of rooms in Freedom High School. There are reports of him being bullied at school. He created a manifesto video about the attack (see page 35.)<sup>54</sup>

**Norway Shooting.** On July 22, 2011, after nine years of meticulous planning, Anders Behring Breivik set off a bomb at a government building in Oslo, Norway, killing eight. He then posed as a police officer and killed 69 youths on Utoya Island, a Labor Party youth camp. He surrendered when armed police confronted him. He claims to have taken these actions to prevent a Muslim takeover of Europe. He outlined his thoughts and instructions for others to follow in his footsteps in his 1,500-page manifesto. He wrote: “I am required to build a capital base in order to fund the creation of the compendium. I don’t know if I will ever proceed with a martyrdom operation at this point as it simply seems too radical” (Englund 2011). He sold many of his belongings to develop funds; buried armor, weapons, and ammunition underground in an airtight case; obtained explosives; reviewed public security reports released by the Norwegian government; and developed intricate cover stories for his friends and family. His planning was methodical, well documented, and focused on accomplishing his mission.<sup>55</sup>

**Tucson Shooting.** On January 8, 2011, Jared Lee Loughner killed six people and injured 14 others with a Glock 9mm pistol. He was required by Pima College to complete a mental health evaluation after concerns around his disruptive behavior in the classroom and posting of YouTube video clips. He did not complete the evaluation request and instead withdrew from school. There is some speculation that Loughner’s past drug use or schizophrenia may have also contributed to his behavior.<sup>56</sup>

**Florida School Board Shooting.** On December 15, 2010, 56-year-old Clay Duke held a school board hostage after spray painting a large “V” on the wall. He talked about revenge after his wife was fired. After firing two shots at a member of the school board, he shot himself as the SWAT team moved in. The entire shooting was caught on tape. He created a Facebook page stating: “Some people (the

government sponsored media) will say I was evil, a monster (V), no, I was just born poor in a country where the Wealthy manipulate, use, abuse, and economically enslave 95% of the population. Rich Republicans, Rich Democrats, same-same, rich, they take turns fleecing us, our few dollars, pyramiding the wealth for themselves. The 95%, the us, in US of A, are the neo slaves of the Global South. Our Masters, the Wealthy, do, as they like to us..."

**UT Austin Library Shooting.** On October 28, 2010, Colton Tooley came armed with an AK-47 and opened fire on the University of Texas, Austin campus. He took his own life shortly after running into the school's library. There was not much known about Colton prior to the attack, other than he was a 19-year-old math major, a good student, and seemed to keep to himself.<sup>57</sup>

**Austin Suicide Attack.** On February 18<sup>th</sup>, 2010, Andrew Joseph Stack III flew his single engine aircraft into an IRS building, killing 1 and injuring 13 others. In 1994, he failed to file a state tax return and declared bankruptcy on his company. He again had his corporation suspended in 2004 for failure to pay taxes. At the time of the incident, he was being audited by the IRS. His suicide note detailed his dislike for the government. He wrote, "I can only hope that the numbers quickly get too big to be white washed and ignored that the American zombies wake up and revolt; it will take nothing less. I would only hope that by striking a nerve that stimulates the inevitable double standard, knee-jerk government reaction that results in more stupid draconian restrictions people wake up and begin to see the pompous political thugs and their mindless minions for what they are. Sadly, though I spent my entire life trying to believe it wasn't so, but violence not only is the answer, it is the only answer. The cruel joke is that the really big chunks of shit at the top have known this all along and have been laughing, at and using this awareness against, fools like me all along."<sup>58,59</sup>

**Fort Hood Mass Shooting.** On November 5, 2009, Nidal Malik Hasan shot and killed 13 people and injured more than 30 others in the Fort Hood mass shooting. Hasan was a United States Army Medical Corps psychiatrist and described by his colleagues as "anti-American." Six months before the attack, he posted online about suicide bombings and other threats. In August 2013, he was convicted of 13 counts of premeditated murder and 32 counts of attempted murder. He is awaiting execution.<sup>60</sup>

**Northern Illinois University Shooting.** On February, 14, 2008, Steven Kazmierczak came into Cole hall and killed five students and injured more 21 others before committing suicide. He carried his weapons concealed in a guitar case. He struggled with mental illness, suicide attempts, and being bullied in high school.<sup>61</sup>

**Columbine Shooting.** On April 20, 1999, Eric Harris and Dylan Klebold shot and killed 12 students and a teacher, and injured 21 other students and a teacher at Columbine High School. Both had several pipe bombs, napalm, knives, and other homemade explosives. Two bombs were set in the school cafeteria. They recorded hours of video, calling others to follow in their footsteps. The video begins with a reference to another shooting: "Do not think we're trying to copy anyone," it tells some future, unseen audience. "We had the idea before the first one ever happened. Our plan is better, not like those fucks in Kentucky with camouflage and .22s. Those kids were only trying to be accepted by others." There was a shooting, the Johnson and Golden shooting in Arkansas in 1988, that seems to match the description, or perhaps the Michael Carneal shooting in Kentucky, which involved a .22.

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## Title IX Regulations (Unofficial)

### Section 106.44(c) Emergency Removal

#### *Overall Support and Opposition to Emergency Removals*

Comments: Some commenters believed that § 106.44(c) provides due process protections for respondents while protecting campus safety. Some commenters supported this provision because it allows educational institutions to respond to situations of immediate danger, while protecting respondents from unfair or unnecessary removals. At least one commenter appreciated the latitude granted to educational institutions under § 106.44(c) to determine how to address safety emergencies arising from allegations of sexual harassment. Some commenters asserted that this provision appropriately reflects many schools' existing behavior risk assessment procedures. Several commenters supported § 106.44(c) and recounted personal stories of how a respondent was removed from classes, or from school, and the negative impact the removal had on that student's professional, academic, or extracurricular life because the removal seemed to presume the "guilt" of the respondent without allegations ever being proved.

Some commenters wanted to omit the emergency removal provision entirely, arguing that if administrators at the postsecondary level have the power to preemptively suspend or expel a student, on the pretext of an emergency, then every sexual misconduct situation could be deemed an emergency and respondents would never receive the due process protections of the § 106.45 grievance process. One commenter suggested that instead of permitting removals, all allegations of sexual harassment should simply go through a more rapid investigation so that the respondent may remain in school and victims are protected, while any falsely accused respondent is quickly exonerated. Some commenters requested that this removal power be limited because of the negative consequences of involuntary removal; one commenter suggested the provision be modified so that the removal must be "narrowly tailored" and "no more extensive than is strictly necessary" to mitigate the health or safety risk. One commenter asserted that this provision should also require that interim emergency removals be based on objective evidence and on current medical knowledge where appropriate, made by a licensed, qualified evaluator.

Some commenters asserted that emergency removals should not be used just because sexual harassment or assault has been alleged, and that § 106.44(c) should more clearly define what counts as an emergency. Some commenters argued that emergency removals should be allowed if the sexual harassment allegation involves rape, but no emergency removal should be allowed if the sexual harassment allegation involves offensive speech.

Commenters argued that § 106.44(c) is unclear as to what constitutes an immediate threat to health or safety. Several commenters argued that emergency removals should be restricted to instances where there is "an immediate threat to safety" (not health), while other commenters argued this provision must be limited to "physical" threats to health or safety. Commenters argued that a "threat to health or safety" is too nebulous a concept to justify immediate removal from campus. According to one commenter, even speaking on campus in favor of the NPRM could be construed by schools or student activists as a threat to the emotional or mental "health or safety" of survivors, even though discussion of public policy is core political speech protected by the First Amendment.

One commenter stated that the use of the plural "students and employees" in § 106.44(c) may preclude an institution from taking emergency action when the immediate threat is to a single student or employee. Commenters argued that postsecondary institutions need the flexibility to address immediate threats to the safety of one student or employee in the same manner as threats to multiple students or employees. Some commenters asserted that § 106.44(c) would unreasonably limit a postsecondary institution's ability to protect persons and property, or to protect against potential disruption of the educational environment, and argued that an institution should have the discretion to invoke an emergency removal under circumstances beyond those listed in § 106.44(c). Commenters argued that § 106.44(c) is too limiting because it does not allow recipients to pursue an emergency removal where the respondent poses a threat of illegal conduct that is not about a health or safety emergency; commenters contended this will subject the complainant or others to ongoing illegal conduct just because it does not constitute a threat to health or safety. Commenters argued that in addition to a health or safety threat, this provision should consider the need to restore or preserve equal access to education as justification for emergency removals. One commenter asserted that a legitimate reason to institute an emergency removal of a respondent is a threat that the respondent may obstruct the collection of relevant information regarding the sexual harassment allegations at issue.

One commenter cited New York Education Law Article 129-B as an example of a detailed framework under which campus officials may conduct an individualized threat assessment, order an interim suspension, and provide due process; commenters asserted that courts hold that the due process required for an interim suspension does not need to consist of a full hearing.<sup>1</sup> Another commenter argued that this provision would constitute an unprecedented Federal preemption of Oregon's existing State and local student discipline rules, which establish the due process requirements for emergency removals from school. Commenters argued that § 106.44(c) would create a higher level of due process for emergency removals in situations that involve alleged sexual harassment than for any other behavioral violation, and that the proposed rules are unclear whether this heightened procedural requirement is triggered only when a complainant alleges sexual harassment as defined in § 106.30, or is also triggered in any case where a complainant alleges sexual harassment that meets a State law definition or school code of conduct that may define sexual harassment more broadly than conduct meeting the § 106.30 definition.

Some commenters suggested that § 106.44(c) be modified to require periodic review of any emergency removal decision, to promote transparency and eliminate the possibility of leaving a respondent on interim suspension indefinitely. Commenters argued that immediate removal is very traumatic, and respondents who have been removed have a significant potential to react by harming themselves or others thus recipients should reduce these risks by ensuring a safe exit plan with adequate support for the respondent in place.

Commenters asserted that the goal should be to preserve educational opportunities for all parties involved to the extent possible, so § 106.44(c) should require recipients to provide alternative academic accommodations for respondents who are removed. Some commenters suggested that this provision should address a respondent's access to a recipient's program or activity, post-removal. Because emergency removal is not premised on a finding of responsibility and occurs *ex parte*, commenters argued that the recipient should be required to provide a respondent with alternative access to the respondent's academic classes during the period of removal and that failure to do so would be sex discrimination against the respondent. Some commenters argued that as to a respondent who is removed on an emergency basis and later found to be not responsible, the final regulations should require the recipient to mitigate the damage caused by the removal, for example, by allowing the respondent to retake classes or exams missed during the removal. One commenter suggested that a recipient should secure the personal property of the removed person (such as the respondent's vehicle) and be responsible for any loss or damage occurring to personal property during a removal.

Other commenters asserted that an individualized risk assessment should be required after every report of sexual assault. Commenters argued that because insurance statistics show a high degree of recidivism among college rapists, and because Title IX is also supposed to deter discrimination based on sex, schools should be required to consider the safety of other students on their campus if they know there is a possible sexual assailant in their midst.

One commenter suggested that licensing board procedures provide the best model for campus procedures because they offer the closest parallel to the types of behavior evaluated and issues at stake for respondents such as reputation, future livelihood, and future opportunities; the commenter asserted that court precedents hold that both public and private recipients must follow principles of fundamental due process and fundamental fairness in disciplinary processes,<sup>2</sup> and professional licensing board procedures adequately protect due process. One commenter applauded the Department for proposing to provide greater due process protections than what current procedures typically provide; however, this commenter asserted that Native American students attending institutions funded by the Bureau of Indian Affairs receive strong due process protections, including greater due process with respect to emergency removals than what § 106.44(c) provides, and the commenter contended that the stronger due process protections should be extended to non-Native American institutions.<sup>3</sup> According to this commenter, unlike Native American students attending schools funded by the Bureau of Indian Affairs, non-Native American students are at risk for permanent removal from campus with potentially devastating consequences.

One commenter asserted that § 106.44(c) should explicitly require the recipient to comply with the Clery Act, notify appropriate authorities, and provide any necessary safety interventions. Another commenter stated that recipients should be required to publicly report the annual number of emergency removals the recipient conducts under § 106.44(c).

1 Commenters cited: *Haidak v. Univ. of Mass. at Amherst*, 299 F. Supp. 3d 242, 265-66 (D. Mass. 2018), *aff'd in part, vacated in part, remanded by Haidak v. Univ. of Mass.-Amherst*, 933 F.3d 56 (1st Cir. 2019).

2 Commenter cited: *Boehm v. Univ. of Pa. Sch. of Veterinary Med.*, 573 A.2d 575, 578 (Pa. Super. Ct. 1990).

3 Commenters cited: 25 CFR 42.1-42.10.



Some commenters asserted that recipients need to do more than simply remove a respondent from its education program or activity. Commenters argued that trauma from sexual assault may cause a complainant to withdraw from an education program or activity, including due to fear of seeing the respondent, suggested that more resources should be made available to complainants, and asserted that the final regulations should specify best practices addressing how a recipient should respond to immediate threats.

Discussion: We appreciate commenters' support for the emergency removal provision in § 106.44(c). Revised in ways explained below, § 106.44(c) provides that in situations where a respondent poses an immediate threat to the physical health and safety of any individual before an investigation into sexual harassment allegations concludes (or where no grievance process is pending), a recipient may remove the respondent from the recipient's education programs or activities. A recipient may need to undertake an emergency removal in order to fulfill its duty not to be deliberately indifferent under § 106.44(a) and protect the safety of the recipient's community, and § 106.44(c) permits recipients to remove respondents in emergency situations that arise out of allegations of conduct that could constitute sexual harassment as defined in § 106.30. Emergency removal may be undertaken in addition to implementing supportive measures designed to restore or preserve a complainant's equal access to education.<sup>4</sup> While we recognize that emergency removal may have serious consequences for a respondent, we decline to remove this provision because where a genuine emergency exists, recipients need the authority to remove a respondent while providing notice and opportunity for the respondent to challenge that decision.

The Department does not believe that rushing all allegations of sexual harassment or sexual assault through expedited grievance procedures adequately promotes a fair grievance process, and forbidding an emergency removal until conclusion of a grievance process (no matter how expedited such a process reasonably could be) might impair a recipient's ability to quickly respond to an emergency situation. The § 106.45 grievance process is designed to provide both parties with a prompt, fair investigation and adjudication likely to reach an accurate determination regarding the responsibility of the respondent for perpetrating sexual harassment. Emergency removal under § 106.44(c) is not a substitute for reaching a determination as to a respondent's responsibility for the sexual harassment allegations; rather, emergency removal is for the purpose of addressing imminent threats posed to any person's physical health or safety, which might arise out of the sexual harassment allegations. Upon reaching a determination that a respondent is responsible for sexual harassment, the final regulations do not restrict a recipient's discretion to impose a disciplinary sanction against the respondent, including suspension, expulsion, or other removal from the recipient's education program or activity. Section 106.44(c) allows recipients to address emergency situations, whether or not a grievance process is underway, provided that the recipient first undertakes an individualized safety and risk analysis and provides the respondent notice and opportunity to challenge the removal decision. We do not believe it is necessary to restrict a recipient's emergency removal authority to removal decisions that are "narrowly tailored" to address the risk because § 106.44(c) adequately requires that the threat "justifies" the removal. If the high threshold for removal under § 106.44(c) exists (i.e., an individualized safety and risk analysis determines the respondent poses an immediate threat to any person's physical health or safety), then we believe the recipient should have discretion to determine the appropriate scope and conditions of removal of the respondent from the recipient's education program or activity. Similarly, we decline to require recipients to follow more prescriptive requirements to undertake an emergency removal (such as requiring that the assessment be based on objective evidence, current medical knowledge, or performed by a licensed evaluator). While such detailed requirements might apply to a recipient's risk assessments under other laws, for the purposes of these final regulations under Title IX, the Department desires to leave as much flexibility as possible for recipients to address any immediate threat to the physical health or safety of any student or other individual. Nothing in these final regulations precludes a recipient from adopting a policy or practice of relying on objective evidence, current medical knowledge, or a licensed evaluator when considering emergency removals under § 106.44(c).

We agree that emergency removal is not appropriate in every situation where sexual harassment has been alleged, but only in situations where an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual justifies the removal, where the threat arises out of allegations of sexual harassment as defined in § 106.30. Because all the conduct that could constitute sexual harassment as defined in § 106.30 is serious conduct that jeopardizes a complainant's equal access to education, we decline to limit emergency removals only to instances where a complainant has alleged sexual assault or rape, or to prohibit emergency removals where the sexual harassment allegations involve verbal harassment. A threat posed by a respondent is not necessarily measured solely by the allegations made by the complainant; we have revised § 106.44(c) to add the phrase "arising from the allegations of sexual harassment" to clarify that the threat justifying a removal could consist of facts and circumstances "arising from" the sexual harassment allegations (and "sexual harassment" is a defined term, under § 106.30). For example, if a respondent threatens physical violence

<sup>4</sup> Section 106.44(a) requires a recipient to offer supportive measures to every complainant, including by having the Title IX Coordinator engage with the complainant in an interactive process that takes into account the complainant's wishes regarding available supportive measures.

against the complainant in response to the complainant's allegations that the respondent verbally sexually harassed the complainant, the immediate threat to the complainant's physical safety posed by the respondent may "arise from" the sexual harassment allegations. As a further example, if a respondent reacts to being accused of sexual harassment by threatening physical self-harm, an immediate threat to the respondent's physical safety may "arise from" the allegations of sexual harassment and could justify an emergency removal. The "arising from" revision also clarifies that recipients do not need to rely on, or meet the requirements of, § 106.44(c) to address emergency situations that do not arise from sexual harassment allegations under Title IX (for example, where a student has brought a weapon to school unrelated to any sexual harassment allegations).

We are persuaded by commenters that § 106.44(c) should be clarified. The final regulations revise this provision to state that the risk posed by the respondent must be to the "physical" health or safety, of "any student or other individual," arising from the allegations of sexual harassment. These revisions help ensure that this provision applies to genuine emergencies involving the physical health or safety of one or more individuals (including the respondent, complainant, or any other individual) and not only multiple students or employees. We agree with commenters who asserted that adding the word "physical" before "health or safety" will help ensure that the emergency removal provision is not used inappropriately to prematurely punish respondents by relying on a person's mental or emotional "health or safety" to justify an emergency removal, as the emotional and mental well-being of complainants may be addressed by recipients via supportive measures as defined in § 106.30. The revision to § 106.44(c) adding the word "physical" before "health and safety" and changing "students or employees" to "any student or other individual" also addresses commenters' concerns that the proposed rules were not specific enough about what kind of threat justifies an emergency removal; the latter revision clarifies that the threat might be to the physical health or safety of one or more persons, including the complainant, the respondent themselves, or any other individual. We decline to remove "health" from the "physical health or safety" phrase in this provision because an emergency situation could arise from a threat to the physical health, or the physical safety, of a person, and because "health or safety" is a relatively recognized term used to describe emergency circumstances.<sup>5</sup>

We decline to add further bases that could justify an emergency removal under § 106.44(c). We recognize the importance of the need to restore or preserve equal access to education, but disagree that it should be a justification for emergency removal; supportive measures are intended to address restoration and preservation of equal educational access, while § 106.44(c) is intended to apply to genuine emergencies that justify essentially punishing a respondent (by separating the respondent from educational opportunities and benefits) arising out of sexual harassment allegations without having fairly, reliably determined whether the respondent is responsible for the alleged sexual harassment. As explained above, we have revised § 106.44(c) to apply only where the immediate threat to a person's physical health or safety arises from the allegations of sexual harassment; this clarifies that where a respondent poses a threat of illegal conduct (perhaps not constituting a threat to physical health or safety) that does not arise from the sexual harassment allegations, this provision does not apply. Nothing in these final regulations precludes a recipient from addressing a respondent's commission of illegal conduct under the recipient's own code of conduct, or pursuant to other laws, where such illegal conduct does not constitute sexual harassment as defined in § 106.30 or is not "arising from the sexual harassment allegations." We disagree that a recipient's assessment that a respondent poses a threat of obstructing the sexual harassment investigation, or destroying relevant evidence, justifies an emergency removal under this provision, because this provision is intended to ensure that recipients have authority and discretion to address health or safety emergencies arising out of sexual harassment allegations, not to address all forms of misconduct that a respondent might commit during a grievance process.

The Department appreciates commenters' concerns that State or local law may present other considerations or impose other requirements before an emergency removal can occur. To the extent that other applicable laws establish additional relevant standards for emergency removals, recipients should also heed such standards. To the greatest degree possible, State and local law ought to be reconciled with the final regulations, but to the extent there is a direct conflict, the final regulations prevail.<sup>6</sup> While commenters correctly note that a "full hearing" is not a constitutional due process requirement in all interim suspension situations, § 106.44(c) does not impose a requirement to hold a "full hearing" and in fact, does not impose any pre-deprivation due process requirements; the opportunity for a respondent to challenge an emergency removal decision need only occur post-deprivation. For reasons described in the "Role of Due Process in the Grievance Process" section of this preamble, the Department has determined that postsecondary institutions must hold live hearings to

<sup>5</sup> E.g., 20 U.S.C. 1232g(b)(1)(I) (allowing disclosure, without prior written consent, of personally identifiable information from a student's education records "subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons"); 34 CFR 99.31(a)(10) and 34 CFR 99.36 (regulations implementing FERPA).

<sup>6</sup> See discussion under the "Section 106.6(h) Preemptive Effect" subsection of the "Clarifying Amendments to Existing Regulations" section of this preamble; see also discussion under the "Spending Clause" subsection of the "Miscellaneous" section of this preamble.

reach determinations regarding responsibility for sexual harassment. However, because § 106.44(c) is intended to give recipients authority to respond quickly to emergencies, and does not substitute for a determination regarding the responsibility of the respondent for the sexual harassment allegations at issue, recipients need only provide respondents the basic features of due process (notice and opportunity), and may do so after removal rather than before a removal occurs. An emergency removal under § 106.44(c) does not authorize a recipient to impose an interim suspension or expulsion on a respondent because the respondent has been accused of sexual harassment. Rather, this provision authorizes a recipient to remove a respondent from the recipient's education program or activity (whether or not the recipient labels such a removal as an interim suspension or expulsion, or uses any different label to describe the removal) when an individualized safety and risk analysis determines that an imminent threat to the physical health or safety of any person, arising from sexual harassment allegations, justifies removal.

Section 106.44(c) expressly acknowledges that recipients may be obligated under applicable disability laws to conduct emergency removals differently with respect to individuals with disabilities, and these final regulations do not alter a recipient's obligation to adhere to the IDEA, Section 504, or the ADA. Due to a recipient's obligations under applicable State laws or disability laws, uniformity with respect to how a recipient addresses all cases involving immediate threats to physical health and safety may not be possible. However, the Department believes that § 106.44(c) appropriately balances the need for schools to remove a respondent posing an immediate threat to the physical health or safety of any person, with the need to ensure that such an ability is not used inappropriately, for instance to bypass the prohibition in § 106.44(a) and § 106.45(b)(1)(i) against imposition of disciplinary sanctions or other actions that are not supportive measures against a respondent without first following the § 106.45 grievance process. The Department does not believe that a lower threshold for an emergency removal appropriately balances these interests, even if this means that emergency removals arising from allegations of sexual harassment must meet a higher standard than when a threat arises from conduct allegations unrelated to Title IX sexual harassment. In response to commenters' reasonable concerns about the potential for confusion, we have added the phrase "arising from the allegations of sexual harassment" (and "sexual harassment" is a defined term under § 106.30) into this provision to clarify that this emergency removal provision only governs situations that arise under Title IX, and not under State or other laws that might apply to other emergency situations.

The Department does not see a need to add language stating that the emergency removal must be periodically reviewed. Emergency removal is not a substitute for the § 106.45 grievance process, and § 106.45(b)(1)(v) requires reasonably prompt time frames for that grievance process. We acknowledge that a recipient could remove a respondent under § 106.44(c) without a formal complaint having triggered the § 106.45 grievance process; in such situations, the requirements in § 106.44(c) giving the respondent notice and opportunity to be heard post-removal suffice to protect a respondent from a removal without a fair process for challenging that outcome, and the Department does not believe it is necessary to require periodic review of the removal decision. We decline to impose layers of complexity onto the emergency removal process, leaving procedures in recipients' discretion; in many cases, recipients will develop a "safe exit plan" as part of implementing an emergency removal, and accommodate students who have been removed on an emergency basis with alternative means to continue academic coursework during a removal period or provide for a respondent to re-take classes upon a return from an emergency removal, or secure personal property left on a recipient's campus when a respondent is removed. We disagree that a recipient's failure to refusal to take any of the foregoing steps necessarily constitutes sex discrimination under Title IX, although a recipient would violate Title IX by, for example, applying different policies to female respondents than to male respondents removed on an emergency basis. Nothing in the final regulations prevents students who have been removed from asserting rights under State law or contract against the recipient arising from a removal under this provision.

We decline to require an individualized safety and risk analysis upon every reported sexual assault, because the § 106.45 grievance process is designed to bring all relevant evidence concerning sexual harassment allegations to the decision-maker's attention so that a determination regarding responsibility is reached fairly and reliably. A recipient is obligated under § 106.44(a) to provide a complainant with a non-deliberately indifferent response to a sexual assault report, which includes offering supportive measures designed to protect the complainant's safety, and if a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances pursuant to § 106.45(b)(10)(ii). Emergency removals under § 106.44(c) remain an option for recipients to respond to situations where an individualized safety and risk analysis determines that a respondent poses an immediate threat to health or safety.

The Department appreciates commenters' assertions that § 106.44(c) should provide more due process protections, similar to those applied in professional licensing board cases or under Federal laws that apply to schools funded by the Bureau of Indian Affairs; however, we

believe that § 106.44(c) appropriately balances a recipient's need to protect individuals from emergency threats, with providing adequate due process to the respondent under such emergency circumstances. Notice and an opportunity to be heard constitute the fundamental features of procedural due process, and the Department does not wish to prescribe specific procedures that a recipient must apply in emergency situations. Accordingly, the Department does not wish to adopt the same due process protections that commenters asserted are applied in professional licensing revocation proceedings, or that are provided to Native American students in schools funded by the Bureau of Indian Affairs. The Department acknowledges that schools receiving funding from the Bureau of Indian Affairs must provide even greater due process protections than what these final regulations require, but these greater due process protections do not conflict with these final regulations. These final regulations govern a variety of recipients, including elementary and secondary schools and postsecondary institutions, but also recipients that are not educational institutions; for example, some libraries and museums are recipients of Federal financial assistance operating education programs or activities. These final regulations provide the appropriate amount of due process for a wide variety of recipients of Federal financial assistance with respect to a recipient's response to emergency situations.

As discussed in the "Clery Act" subsection of the "Miscellaneous" section of this preamble, postsecondary institutions subject to these Title IX regulations may also be subject to the Clery Act. We decline to state in § 106.44(c) that recipients must also comply with the Clery Act because we do not wish to create confusion about whether § 106.44(c) applies only to postsecondary institutions (because the Clery Act does not apply to elementary and secondary schools). We decline to require recipients to notify authorities, provide safety interventions, or annually report the number of emergency removals conducted under § 106.44(c), because we do not wish to prescribe requirements on recipients beyond what we have determined is necessary to fulfill the purpose of this provision: granting recipients authority and discretion to appropriately respond to emergency situations arising from sexual harassment allegations. Nothing in these final regulations precludes a recipient from notifying authorities, providing safety interventions, or reporting the number of emergency removals, to comply with other laws requiring such steps or based on a recipient's desire to take such steps. For similar reasons, we decline to require recipients to adopt "best practices" for responding to threats. We note that these final regulations require recipients to offer supportive measures to every complainant, and do not preclude a recipient from providing resources to complainants or respondents.

Changes: We have revised § 106.44(c) so that a respondent removed on an emergency basis must pose an immediate threat to the "physical" health or safety (adding the word "physical") of "any student or other individual" (replacing the phrase "students or employees"). We have also revised the proposed language to clarify that the justification for emergency removal must arise from allegations of sexual harassment under Title IX.

#### *Intersection with the IDEA, Section 504, and ADA*

Comments: Some commenters applauded the "saving clause" in § 106.44(c) acknowledging that the respondent may have rights under the IDEA, Section 504, or the ADA. Several commenters asserted that § 106.44(c) would create uncertainty regarding the interplay between Title IX and relevant disabilities laws, which would further exacerbate the uncertainty regarding involuntary removal of students who pose a threat to themselves. Other commenters stated that the result of this provision would likely be different handling of Title IX cases for students with disabilities versus students without disabilities because of the requirements of the IDEA, Section 504, and the ADA. Some commenters believed this provision (and the proposed rules overall) appear to give consideration to the rights and needs of respondents with disabilities, without similar consideration for the rights of complainants or witnesses with disabilities. Commenters asserted that § 106.44(c) is subject to problematic interpretation because by expressly referencing the IDEA, Section 504, and the ADA this provision might wrongly encourage schools to remove students with disabilities because of implicit bias against students with disabilities, especially students with intellectual disabilities.

One commenter suggested that § 106.44(c) should track the definition of "direct threat" used in the Equal Employment Opportunity Commission's (EEOC) regulations, upheld by the Supreme Court,<sup>7</sup> and as outlined in ADA regulations<sup>8</sup> because this would give recipients and respondents a clearer standard and reduce the chances that removal decisions will be based on generalizations, ignorance, fear, patronizing attitudes, or stereotypes regarding individuals with disabilities.

<sup>7</sup> Commenters cited: *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73 (2002).

<sup>8</sup> Commenters cited: 28 CFR 35.139(b) ("In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.").



Some commenters argued that this provision conflicts with the IDEA, Section 504, and the ADA, and that removals are not as simple as conducting a mere risk assessment, because the IDEA governs emergency removal of students in elementary school who are receiving special education and related services.<sup>9</sup> Commenters asserted that under the IDEA, a school administrator cannot make a unilateral risk assessment, and placement decisions cannot be made by an administrator alone; rather, commenters argued, these decisions must be made by a team that includes the parent and relevant members of the IEP (Individualized Education Program) Team and if the conduct in question was a manifestation of a disability, the recipient cannot make a unilateral threat assessment and remove a child from school, absent extreme circumstances. These commenters further argued that sometimes certain behaviors are the result or manifestation of a disability, despite being sexually offensive, e.g., a student with Tourette's syndrome blurting out sexually offensive language. Commenters argued that under disability laws schools cannot remove those students from school without complying with the IDEA, Section 504, and the ADA. One commenter recommended that § 106.44(c) require, at a minimum, training for Title IX administrators on the intersection among Title IX and applicable disability laws. In the college setting, the commenter further recommended that Title IX Coordinators not be permitted to impose supportive measures that involve removal without feedback from administrators from the institution's office of disability services, provided that the student is registered with the pertinent office. If a student has an Individualized Education Plan (IEP) in secondary school, commenters recommended that the administration immediately call for a team meeting to determine the next steps.

Other commenters asserted that any language under § 106.44(c) must make clear that the free appropriate public education (FAPE) to which students with disabilities are entitled must continue, even in circumstances when emergency removal is deemed necessary under Title IX. Given this, one commenter recommended that the language in § 106.44(c) clarify that this provision does not supersede rights under disability laws.

Some commenters, while expressing overall support for § 106.44(c), requested additional guidance on the intersection of Title IX, the IDEA, and the ADA, and how elementary and secondary schools would implement § 106.44(c). The commenters asserted that the final regulations should be explicit that regardless of a student's IEP or "504 plan" under the IDEA or Section 504, the student is not allowed to engage in threatening or harmful behavior and that this would be similar to the response a campus might have to any other serious violation, such as bringing a firearm to class. Commenters also argued that the final regulations should clarify that separation of elementary and secondary school students with disabilities from classroom settings should be rare and only when done in compliance with the IDEA. Commenters argued that recipients must be made aware that a student with a disability does not have to be eligible for a free appropriate public education (FAPE) in order for § 106.44(c) to apply, and that recipients must not be misled into thinking there are different standards for elementary and secondary school and postsecondary education environments when it comes to equal access to educational opportunities.

Other commenters argued that § 106.44(c) may violate compulsory educational laws by removing elementary-age students from school on an emergency basis. When an elementary school student is removed under § 106.44(c), commenters wondered whether the school is supposed to have a designated site for housing or educating removed students during the investigation.

Discussion: Section 106.44(c) states that this provision does not modify any rights under the IDEA, Section 504, or the ADA. In the final regulations, we removed reference to certain titles of the ADA and refer instead to the "Americans with Disabilities Act" so that application of any portion of the ADA requires a recipient to meet ADA obligations while also complying with these final regulations. We disagree that this provision will create ambiguity or otherwise supersede rights that students have under these disability statutes. Additionally, we do not believe that expressly acknowledging recipients' obligations under disability laws incentivizes recipients to remove respondents with disabilities; rather, reference in this provision to those disability laws will help protect respondents from emergency removals that do not also protect the respondents' rights under applicable disability laws. With respect to implicit bias against students with disabilities, recipients must be careful to ensure that all emergency removal proceedings are impartial, without bias or conflicts of interest<sup>10</sup> and the final regulations do not preclude a recipient from providing training to employees, including Title IX personnel, regarding a recipient's obligations under both Title

<sup>9</sup> Commenters cited: *Glen by & through Glen v. Charlotte-Mecklenburg Sch. Bd. of Educ.*, 903 F. Supp. 918, 935 (W.D.N.C. 1995) ("[W]here student poses an immediate threat, [the school] may temporarily suspend up to 10 school days.").

<sup>10</sup> Section 106.45(b)(1)(iii) requires all Title IX Coordinators (and investigators, decision-makers, and persons who facilitate informal resolution processes) to be free from conflicts of interest or bias against complainants and respondents generally or against an individual complainant or respondent, and requires training for such personnel that includes (among other things) how to serve impartially. A "respondent" under § 106.30 means any individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment; thus, a Title IX Coordinator interacting with a respondent undergoing an emergency removal must serve impartially, without conflict of interest or bias.

IX and applicable disability laws. Any different treatment between students without disabilities and students with disabilities with respect to emergency removals, may occur due to a recipient's need to comply with the IDEA, Section 504, the ADA, or other disability laws, but would not be permissible due to bias or stereotypes against individuals with disabilities.

As explained in the "Directed Question 5: Individuals with Disabilities" subsection of the "Directed Questions" section of this preamble, recipients have an obligation to comply with applicable disability laws with respect to complainants as well as respondents (and any other individual involved in a Title IX matter, such as a witness), and the reference to disability laws in § 106.44(c) does not obviate recipients' responsibilities to comply with disability laws with respect to other applications of these final regulations.

The Department appreciates commenters' suggestion to mirror the "direct threat" language utilized in ADA regulations; however, we have instead revised § 106.44(c) to refer to the physical health or safety of "any student or other individual" because this language better aligns this provision with the FERPA health and safety emergency exception, and avoids the confusion caused by the "direct threat" language under ADA regulations because those regulations refer to a "direct threat to the health or safety of others"<sup>11</sup> which does not clearly encompass a threat to the respondent themselves (e.g., where a respondent threatens self-harm). By revising § 106.44(c) to refer to a threat to the physical health or safety "of any student or other individual" this provision does encompass a respondent's threat of self-harm (when the threat arises from the allegations of sexual harassment), and is aligned with the language used in FERPA's health or safety exception.<sup>12</sup> We note that recipients still need to comply with applicable disability laws, including the ADA, in making emergency removal decisions.

The Department appreciates commenters' varied concerns that complying with these final regulations, and with disability laws, may pose challenges for recipients, including specific challenges for elementary and secondary schools, and postsecondary institutions, because of the intersection among the IDEA, Section 504, the ADA, and how to conduct an emergency removal under these final regulations under Title IX. The Department will offer technical assistance to recipients regarding compliance with laws under the Department's enforcement authority. However, the Department does not believe that recipients' obligations under multiple civil rights laws requires changing the emergency removal provision in § 106.44(c) because this is an important provision to ensure that recipients have flexibility to balance the need to address emergency situations with fair treatment of a respondent who has not yet been proved responsible for sexual harassment. The Department does not believe that applicable disability laws, or other State laws, render a recipient unable to comply with all relevant legal obligations. For instance, with respect to compulsory education laws, nothing in § 106.44(c) relieves a recipient from complying with State laws requiring that students under a certain age receive government-provided education services. As a further example, nothing in § 106.44(c) prevents a recipient from involving a student's IEP team before making an emergency removal decision, and § 106.44(c) does not require a recipient to remove a respondent where the recipient has determined that the threat posed by the respondent, arising from the sexual harassment allegations, is a manifestation of a disability such that the recipient's discretion to remove the respondent is constrained by IDEA requirements.

Changes: We have replaced the phrase "students or employees" with the phrase "any student or other individual" in § 106.44(c) and removed specification of certain titles of the ADA, instead referencing the whole of the ADA.

### *Post-Removal Challenges*

Comments: Some commenters supported § 106.44(c) giving respondents notice and opportunity to challenge the removal immediately after the removal, because during a removal a respondent might lose a significant amount of instructional time while waiting for a grievance proceeding to conclude, and being out of school can harm the academic success and emotional health of the removed student. Other commenters asserted that respondents should not be excluded from a recipient's education program or activity until conclusion of a grievance process, and a post-removal challenge after the fact is insufficient to assure due process for respondents, especially because § 106.44(c) does not specify requirements for the time frame or procedures used for a challenging the removal decision.

<sup>11</sup> 28 CFR 35.139(b) ("In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.") (emphasis added).

<sup>12</sup> E.g., 20 U.S.C. 1232g(b)(1)(I) (allowing disclosure, without prior written consent, of personally identifiable information from a student's education records "subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons"); see also regulations implementing FERPA, 34 CFR 99.31(a)(10) and 99.36.



Some commenters argued that the ability of a removed respondent to challenge the removal would pose an unnecessary increased risk to the safety of the community, especially because § 106.44(c) already requires the recipient to determine the removal was justified by an individualized safety and risk analysis. Commenters argued that a school's emergency removal decision should stand until a threat assessment team has met and given a recommendation to affirm or overrule the decision.

Some commenters asserted that § 106.44(c) is ambiguous about the right to a post-removal challenge and argued that the failure to provide more clarity is problematic because it is unclear if the "immediate" challenge must occur minutes, hours, one day, or several days after the removal. Commenters argued that a plain language interpretation of "immediately" may require the challenge to occur minutes after the suspension, but this could jeopardize the safety of the complainant and the community, because the very point of an interim suspension is to remove a known risk from campus. Other commenters argued that requiring an "immediate" post-removal challenge could undermine the respondent's due process rights, because the respondent might not be physically present on campus when the interim suspension (e.g., removal) is issued. Some commenters argued that there should be a delay between when the removal occurred and when the opportunity to challenge occurs, because students and employees are often afraid of providing information to college administrations due to legitimate, reasonable fear for their own safety. Commenters requested that this provision be modified to give the respondent a challenge opportunity "as soon as reasonably practicable" rather than "immediately." Commenters asked whether providing a challenge opportunity "immediately" must, or could, be the same as the "prompt" time frames required under § 106.45.

Discussion: The Department appreciates commenters' support of the post-removal challenge opportunity provided in § 106.44(c). The Department disagrees with commenters who suggested that no challenge to removals ought to be possible, and believes that § 106.44(c) appropriately balances the interests involved in emergency situations. We do not believe that prescribing procedures for the post-removal challenge is necessary or desirable, because this provision ensures that respondents receive the essential due process requirements of notice and opportunity to be heard while leaving recipients flexibility to use procedures that a recipient deems most appropriate.<sup>13</sup> These final regulations aim to improve the perception and reality of the fairness and accuracy by which a recipient resolves allegations of sexual harassment, and therefore the § 106.45 grievance process prescribes a consistent framework and specific procedures for resolving formal complaints of sexual harassment. By contrast, § 106.44(c) is not designed to resolve the underlying allegations of sexual harassment against a respondent, but rather to ensure that recipients have the authority and discretion to appropriately handle emergency situations that may arise from allegations of sexual harassment. As discussed above, the final regulations revise the language in § 106.44(c) to add the phrase "arising from the allegations of sexual harassment," which clarifies that the facts or circumstances that justify a removal might not be the same as the sexual harassment allegations but might "arise from" those allegations.

The Department disagrees that a post-removal challenge is unnecessary because the individualized safety and risk analysis already determined that removal was justified; the purpose of a true emergency removal is to authorize a recipient to respond to immediate threats even without providing the respondent with pre-deprivation notice and opportunity to be heard because this permits a recipient to protect the one or more persons whose physical health or safety may be in jeopardy. The respondent's first opportunity to challenge the removal (e.g., by presenting the recipient with facts that might contradict the existence of an immediate threat to physical health or safety) might be after the recipient already reached its determination that removal is justified, and due process principles (whether constitutional due process of law, or fundamental fairness) require that the respondent be given notice and opportunity to be heard.<sup>14</sup> Section 106.44(c) does not preclude a recipient from convening a threat assessment team to review the recipient's emergency removal determination, but § 106.44(c) still requires the recipient to give the respondent post-removal notice and opportunity to challenge the removal decision.

The Department expects the emergency removal process to be used in genuine emergency situations, but when it is used, recipients must provide an opportunity for a removed individual to challenge their removal immediately after the removal. The term "immediately" will be fact-specific, but is generally understood in the context of a legal process as occurring without delay, as soon as possible, given the circumstances. "Immediately" does not require a time frame of "minutes" because in the context of a legal proceeding the term immediately is not generally understood to mean an absolute exclusion of any time interval. "Immediately" does not imply the same time frame as the "rea-

<sup>13</sup> E.g., *Goss v. Lopez*, 419 U.S. 565, 582-83 (1975) ("Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable").

<sup>14</sup> *Goss*, 419 U.S. at 580 ("At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing.").

sonably prompt” time frames that govern the grievance process under § 106.45, because “immediately” suggests a more pressing, urgent time frame than “reasonable promptness.” This is appropriate because § 106.44(c) does not require a recipient to provide the respondent with any pre-deprivation notice or opportunity to be heard, so requiring post-deprivation due process protections “immediately” after the deprivation ensures that a respondent’s interest in access to education is appropriately balanced against the recipient’s interest in quickly addressing an emergency situation posed by a respondent’s risk to the physical health or safety of any student or other individual. We decline to require the post-removal notice and challenge to be given “as soon as reasonably practicable” instead of “immediately” because that would provide the respondent less adequate post-deprivation due process protections.

Changes: None.

#### *No Stated Time Limitation for the Emergency Removal*

Comments: Some commenters viewed the absence of a time limitation with respect to how long an emergency removal could be as a source of harm to both respondents and complainants. Commenters asserted that, given how long the grievance process could take, students and employees removed from their education or employment until conclusion of the grievance process could experience considerable negative consequences. Commenters argued that the proposed rules should not encourage emergency removal, particularly not when other, less severe measures could be taken to ensure safety pending an investigation. Commenters proposed limiting an emergency removal to seven days, during which time an institution would determine in writing that an immediate threat to health or safety exists, warranting the emergency action, and if no such determination is reached, the respondent would be reinstated.

Discussion: The final regulations require schools to offer supportive measures to complainants and permit recipients to offer supportive measures to respondents. We decline to require emergency removals in every situation where a formal complaint triggers a grievance process. The grievance process is designed to conclude promptly, and the issue of whether a respondent needs to be removed on an emergency basis should not arise in most cases, since § 106.44(c) applies only where emergency removal is justified by an immediate threat to the physical health or safety of any student or other individual. Revised § 106.44(a), and revised § 106.45(b)(1)(i), prohibit a recipient from imposing against a respondent disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, without following the § 106.45 grievance process. Emergency removal under § 106.44(c) constitutes an exception to those prohibitions, and should not be undertaken in every situation where sexual harassment has been alleged. Rather, emergency removal is appropriate only when necessary to address imminent threats to a person’s physical health or safety arising from the allegations of sexual harassment.

The Department declines to put any temporal limitation on the length of a valid emergency removal, although nothing in the final regulations precludes a recipient from periodically assessing whether an immediate threat to physical health or safety is ongoing or has dissipated.

Changes: None.

#### *“removal”*

Comments: Commenters requested clarification in the following regards: Would removing a respondent from a class, or changing the respondent’s class schedule, before a grievance process is completed (or where no formal complaint has initiated a grievance process), require a recipient to undertake emergency removal procedures? Under § 106.44(c) must a recipient remove a respondent from the entirety of recipient’s education program or activity, or may a recipient choose to only remove the respondent to the extent the individual poses an emergency in a specific setting, i.e., a certain class, student organization, living space, athletic team, etc.?

Commenters argued that the § 106.30 definition of supportive measures and § 106.44(c) regarding emergency removal could lead to confusion among recipients about what steps they can take to protect a complainant’s safety and access to education prior to conclusion of a grievance process, or where no formal complaint has initiated a grievance process. One commenter suggested modifying this provision to expressly permit partial exclusion from programs or activities by adding the phrase “or any part thereof.”

Commenters argued that § 106.44(c) would make it too difficult to remove a respondent before the completion of a disciplinary proceeding absent an extreme emergency. Commenters suggested that the Department should consider a more nuanced approach that provides schools with a range of options, short of emergency removal, that are proportionate to the alleged misconduct and meet the needs of the

victim. Commenters requested that § 106.44(c) be revised to allow an appropriate administrator (such as a dean of students), in consultation with the Title IX Coordinator, discretion to determine the appropriateness of an emergency removal based on a standard that is in the best interest of the institution.

Some commenters argued that even where an emergency threat exists, § 106.44(c) does not provide a time frame in which the recipient must make this emergency removal decision, leaving survivors vulnerable to daily contact with a dangerous respondent. Commenters asserted that recipients should be able to remove a respondent from a dorm or shared classes before conclusion of a disciplinary proceeding, particularly when it is clear that the survivor's education will be harmed otherwise. Commenters asserted that 80 percent of rapes and sexual assaults are committed by someone known to the victim,<sup>15</sup> which means that it is highly likely that the victim and perpetrator share a dormitory, a class, or other aspect of the school environment and that § 106.44(c) (combined with the § 106.30 definition of "supportive measures") leaves victims in continual contact with their harasser, thereby prioritizing the education of accused harassers over the education of survivors. Commenters argued that survivors should not have to wait until the end of a grievance process to be protected from seeing a perpetrator in class or on campus, and this provision would pressure survivors to file formal complaints when many survivors do not want a formal process for valid personal reasons, because a formal process would be the only avenue for ensuring that a "guilty" respondent will be suspended or expelled. Commenters recommended adding language to clarify that nothing shall prevent elementary and secondary schools from implementing an "alternate assignment" during the pendency of an investigation, provided that the same is otherwise permitted by law.

One commenter suggested combining the emergency removal and supportive measures provisions into a single "interim measures" provision.

Discussion: The Department believes the § 106.30 definition of supportive measures, and § 106.44(c) governing emergency removals, in the context of the revised requirements in § 106.44(a) and § 106.45(b)(1)(i) (requiring recipients to offer supportive measures to complainants while not imposing against respondents disciplinary sanctions or other actions that are not "supportive measures") provide a wide range and variety of options for a recipient to preserve equal educational access, protect the safety of all parties, deter sexual harassment, and respond to emergency situations.

Under § 106.30, a supportive measure must not be punitive or disciplinary, but may burden a respondent as long as the burden is not unreasonable. As discussed in the "Supportive Measures" subsection of the "Section 106.30 Definitions" section of this preamble, whether a certain measure unreasonably burdens a respondent requires a fact-specific inquiry. Changing a respondent's class schedule or changing a respondent's housing or dining hall assignment may be a permissible supportive measure depending on the circumstances. By contrast, removing a respondent from the entirety of the recipient's education programs and activities, or removing a respondent from one or more of the recipient's education programs or activities (such as removal from a team, club, or extracurricular activity), likely would constitute an unreasonable burden on the respondent or be deemed disciplinary or punitive, and therefore would not likely qualify as a supportive measure. Until or unless the recipient has followed the § 106.45 grievance process (at which point the recipient may impose any disciplinary sanction or other punitive or adverse consequence of the recipient's choice), removals of the respondent from the recipient's education program or activity<sup>16</sup> need to meet the standards for emergency removals under § 106.44(c).<sup>17</sup> Supportive measures provide one avenue for recipients to protect the safety of parties and permissibly may affect and even burden the respondent, so long as the burden is not unreasonable. Supportive measures may include, for example, mutual or unilateral restrictions on contact between parties or re-arranging class schedules or classroom seating assignments, so complainants need not remain in constant or daily contact with a respondent while an investigation is pending, or even where no grievance process is pending.

<sup>15</sup> Commenters cited: U.S. Dep't. of Justice, Office of Justice Programs, Bureau of Justice Statistics, Special Report: Rape and Sexual Assault Victimization Among College-Age Females, 1995-2013 (2014).

<sup>16</sup> As discussed in the "Section 106.44(a) 'education program or activity'" subsection of the "Section 106.44 Recipient's Response to Sexual Harassment, Generally" section of this preamble, the Title IX statute and existing regulations provide definitions of "program or activity" that apply to interpretation of a recipient's "education program or activity" in these final regulations, and we have clarified in § 106.44(a) that for purposes of responding to sexual harassment a recipient's education program or activity includes circumstances over which the recipient exercised substantial control. 20 U.S.C. 1687; 34 CFR 106.2(h); 34 CFR 106.2(i) (defining "recipient"); 34 CFR 106.31(a) (referring to "any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance").

<sup>17</sup> Cf. § 106.44(d) (a non-student employee-respondent may be placed on administrative leave (with or without pay) while a § 106.45 grievance process is pending, without needing to meet the emergency removal standards in § 106.44(c)).

Whether an elementary and secondary school recipient may implement an “alternate assignment” during the pendency of an investigation (or without a grievance process pending), in circumstances that do not justify an emergency removal, when such action is otherwise permitted by law, depends on whether the alternate assignment constitutes a disciplinary or punitive action or unreasonably burdens the respondent (in which case it would not qualify as a supportive measure as defined in § 106.30).<sup>18</sup> Whether an action “unreasonably burdens” a respondent is fact-specific, but should be evaluated in light of the nature and purpose of the benefits, opportunities, programs and activities, of the recipient in which the respondent is participating, and the extent to which an action taken as a supportive measure would result in the respondent forgoing benefits, opportunities, programs, or activities in which the respondent has been participating. An alternate assignment may, of course, be appropriate when an immediate threat justifies an emergency removal of the respondent because under the final regulations, emergency removal may justify total removal from the recipient’s education program or activity, so offering the respondent alternate assignment is included within the potential scope of an emergency removal. Under § 106.44(a), the recipient must offer supportive measures to the complainant, and if a particular action – such as alternate assignment – does not, under specific circumstances, meet the definition of a supportive measure, then the recipient must carefully consider other individualized services, reasonably available, designed to restore or preserve the complainant’s equal educational access and/or protect safety and deter sexual harassment, that the recipient will offer to the complainant.

We do not believe that the final regulations incentivize complainants to file formal complaints when they otherwise do not wish to do so just to avoid contacting or communicating with a respondent, because supportive measures permit a range of actions that are non-punitive, non-disciplinary, and do not unreasonably burden a respondent, such that a recipient often may implement supportive measures that do meet a complainant’s desire to avoid contact with the respondent. For example, if a complainant and respondent are both members of the same athletic team, a carefully crafted unilateral no-contact order could restrict a respondent from communicating directly with the complainant so that even when the parties practice on the same field together or attend the same team functions together, the respondent is not permitted to directly communicate with the complainant. Further, the recipient may counsel the respondent about the recipient’s anti-sexual harassment policy and anti-retaliation policy, and instruct the team coaches, trainers, and staff to monitor the respondent, to help enforce the no-contact order and deter any sexual harassment or retaliation by the respondent against the complainant. Further, nothing in the final regulations, or in the definition of supportive measures in § 106.30, precludes a recipient from altering the nature of supportive measures provided, if circumstances change. For example, if the Title IX Coordinator initially implements a supportive measure prohibiting the respondent from directly communicating with the complainant, but the parties later each independently decide to take the same lab class, the Title IX Coordinator may, at the complainant’s request, reevaluate the circumstances and offer the complainant additional supportive measures, such as requiring the professor teaching the lab class to ensure that the complainant and respondent are not “teamed up” or assigned to sit near each other or assigned as to be “partners,” during or as part of the lab class.

Commenters correctly observe that the final regulations prohibit suspending or expelling a respondent without first following the § 106.45 grievance process, or unless an emergency situation justifies removal from the recipient’s education program or activity (which removal may, or may not, be labeled a “suspension” or “expulsion” by the recipient). We do not believe this constitutes unfairness to survivors, or poses a threat to survivors’ equal educational access, because there are many actions that meet the definition of supportive measures that may restore or preserve a complainant’s equal access, protect a complainant’s safety, and/or deter sexual harassment without punishing or unreasonably burdening a respondent. As discussed in the “Section 106.45(b)(1)(iv) Presumption of Non-Responsibility” subsection of the “General Requirements for § 106.45 Grievance Process” subsection of the “Section 106.45 Recipient’s Response to Formal Complaints” section of this preamble, refraining from treating people accused of wrongdoing as responsible for the wrongdoing prior to evidence proving the person is responsible is a fundamental tenet of American justice. These final regulations appropriately ensure that respondents are not unfairly, prematurely treated as responsible before being proved responsible, with certain reasonable exceptions: emergency removals, administrative leave for employees, and informal resolution of a formal complaint that resolves the allegations without a full investigation and adjudication but may result in consequences for a respondent including suspension or expulsion. In this way, the final regulations ensure that every complainant is offered supportive measures designed to preserve their equal educational access and protect their safety (even without any proof of the merits of the complainant’s allegations) consistent with due process protections and fundamental fairness. As an example, a complainant understandably may desire as a supportive measure the ability to avoid being in the same classroom with a respondent, whether or not the complainant wants to file a formal complaint. A school may conclude that transferring the respondent

<sup>18</sup> For discussion of alternate assignments when the respondent is a non-student employee, see the “Section 106.44(d) Administrative Leave” subsection of the “Additional Rules Governing Recipients’ Responses to Sexual Harassment” subsection of the “Section 106.44 Recipient’s Response to Sexual Harassment, Generally” section of this preamble.

to a different section of that class (e.g., that meets on a different day or different time than the class section in which the complainant and respondent are enrolled) is a reasonably available supportive measure that preserves the complainant's equal access and protects the complainant's safety or deters sexual harassment, while not constituting an unreasonable burden on the respondent (because the respondent is still able to take that same class and earn the same credits toward graduation, for instance). If, on the other hand, that class in which both parties are enrolled does not have alternative sections that meet at different times, and precluding the respondent from completing that class would delay the respondent's progression toward graduation, then the school may determine that requiring the respondent to drop that class would constitute an unreasonable burden on the respondent and would not qualify as a supportive measure, although granting the complainant an approved withdrawal from that class with permission to take the class in the future, would of course constitute a permissible supportive measure for the recipient to offer the complainant. Alternatively in such a circumstance (where the complainant, like the respondent, cannot withdraw from that class and take it later without delaying progress toward graduation), the school may offer the complainant as a supportive measure, for example, a one-way no contact order that prohibits the respondent from communicating with the complainant and assigns the respondent to sit across the classroom from the complainant. As such an example shows, these final regulations allow, and require, a recipient to carefully consider the specific facts and circumstances unique to each situation to craft supportive measures to help a complainant without prematurely penalizing a respondent.

The Department does not believe it is necessary or appropriate to require a time frame for when a recipient must undertake an emergency removal, because the risk arising from the sexual harassment allegations that may justify a removal may arise at any time; further, § 106.44(a) requires a recipient to respond "promptly" to sexual harassment, and if an emergency removal is a necessary part of a recipient's non-deliberately indifferent response then such a response must be prompt. We reiterate that emergency removal is not about reaching factual conclusions about whether the respondent is responsible for the underlying sexual harassment allegations. Emergency removal is about determining whether an immediate threat arising out of the sexual harassment allegations justifies removal of the respondent.

We appreciate the opportunity to clarify that, where the standards for emergency removal are met under § 106.44(c), the recipient has discretion whether to remove the respondent from all the recipient's education programs and activities, or to narrow the removal to certain classes, teams, clubs, organizations, or activities. We decline to add the phrase "or any part thereof" to this provision because a "part of" a program may not be readily understood, and we believe the authority to exclude entirely includes the lesser authority to exclude partially.

Section 106.44(a) and § 106.45(b)(1)(i) forbid a recipient from imposing disciplinary sanctions (or other actions that are not supportive measures) on a respondent without first following a grievance process that complies with § 106.45. We reiterate that a § 106.44(c) emergency removal may be appropriate whether or not a grievance process is underway, and that the purpose of an emergency removal is to protect the physical health or safety of any student or other individual to whom the respondent poses an immediate threat, arising from allegations of sexual harassment, not to impose an interim suspension or expulsion on a respondent, or penalize a respondent by suspending the respondent from, for instance, playing on a sports team or holding a student government position, while a grievance process is pending. The final regulations respect complainants' autonomy and understand that not every complainant wishes to participate in a grievance process, but a complainant's choice not to file a formal complaint or not to participate in a grievance process does not permit a recipient to bypass a grievance process and suspend or expel (or otherwise discipline, penalize, or unreasonably burden) a respondent accused of sexual harassment. An emergency removal under § 106.44(c) separates a respondent from educational opportunities and benefits, and is permissible only when the high threshold of an immediate threat to a person's physical health or safety justifies the removal.

Because the purposes of, and conditions for, "supportive measures" as defined in § 106.30 differ from the purposes of, and conditions for, an emergency removal under § 106.44(c), we decline to combine these provisions. Both provisions, and the final regulations as a whole, do not prioritize the educational needs of a respondent over a complainant, or vice versa, but aim to ensure that complainants receive a prompt, supportive response from a recipient, respondents are treated fairly, and recipients retain latitude to address emergency situations that may arise.

Changes: None.

*"individualized safety and risk analysis"*

Comments: Many commenters argued that the lack of guidance in § 106.44(c) on the requirements for conducting the "individualized safety



and risk analysis” is confusing, and should be better defined because it could lead to inconsistent results from school to school, county to county, and State to State. Some commenters expressed overall support for this provision, but argued that the power of removal should not be wielded without careful consideration, and requested clarity about who would undertake the risk analysis (e.g., an internal or external individual on behalf of a recipient). Other commenters stated that § 106.44(c) should list factors to consider in the required safety and risk analysis including: whether violence was alleged (which commenters asserted is rare in cases involving alleged incapacitation), how long the complainant took to file a complaint, whether the complainant has reported the allegations to the police, and whether there are other, less restrictive measures that could be taken. Commenters argued that the risk assessment requirement may prevent the removal of respondents who are in fact dangerous because context and other nuances may not be accounted for in the assessment. One commenter stated that the § 106.44(c) safety and risk analysis requirements are “good, but sometimes not realistic” because threat assessment teams do not meet daily, and it is sometimes necessary to decide a removal in a matter of hours. Other commenters stated some recipients have already incorporated this sort of threat assessment into their decision matrix because postsecondary institutions are obligated to take reasonable steps to address dangers or threats to their students.

Some commenters were concerned that institutions lack sufficient resources to properly conduct the required safety and risk analysis, that institutions lack the proper tools to conduct assessments calibrated to the age and developmental issues of the respondent, and that institutions lack the training and knowledge to properly implement such assessments. Commenters asserted that this provision would require institutions to train employees to conduct an individualized safety and risk analysis before removing students on an emergency basis, but that such assessments are rarely within the capacity or expertise of a single employee, and thus may require a committee or task force dedicated for this purpose.

Discussion: Recipients are entitled to use § 106.44(c) to remove a respondent on an emergency basis, only where there is an immediate threat to the physical health or safety of any student or other individual. The “individualized safety or risk analysis” requirement ensures that the recipient should not remove a respondent from the recipient’s education program or activity pursuant to § 106.44(c) unless there is more than a generalized, hypothetical, or speculative belief that the respondent may pose a risk to someone’s physical health or safety. The Department believes that the immediate threat to physical health or safety threshold for justifying a removal sufficiently restricts § 106.44(c) to permitting only emergency removals and believes that further describing what might constitute an emergency would undermine the purpose of this provision, which is to set a high threshold for emergency removal yet ensure that the provision will apply to the variety of circumstances that could present such an emergency. The Department also believes that the final regulations adequately protect respondents, since in cases where the recipient removes a respondent, the recipient must follow appropriate procedures, including bearing the burden of demonstrating that the removal meets the threshold specified by the final regulations, based on a factual, individualized safety and risk analysis. We understand commenters’ concerns that the individualized, fact-based nature of an emergency removal assessment may lead to different results from school to school or State to State, but different results may be reasonable based on the unique circumstances presented in individual situations.

Because the safety and risk analysis under § 106.44(c) must be “individualized,” the analysis cannot be based on general assumptions about sex, or research that purports to profile characteristics of sex offense perpetrators, or statistical data about the frequency or infrequency of false or unfounded sexual misconduct allegations. The safety and risk analysis must be individualized with respect to the particular respondent and must examine the circumstances “arising from the allegations of sexual harassment” giving rise to an immediate threat to a person’s physical health or safety. These circumstances may include factors such as whether violence was allegedly involved in the conduct constituting sexual harassment, but could also include circumstances that “arise from” the allegations yet do not constitute the alleged conduct itself; for example, a respondent could pose an immediate threat of physical self-harm in reaction to being accused of sexual harassment. For a respondent to be removed on an emergency basis, the school must determine that an immediate threat exists, and that the threat justifies removal. Section 106.44(c) does not limit the factors that a recipient may consider in reaching that determination.

We appreciate commenters’ concerns that performing safety and risk analyses may require a recipient to expend resources or train employees, but without an individualized safety and risk analysis a recipient’s decision to remove a respondent might be arbitrary, and would fail to apprise the respondent of the basis for the recipient’s removal decision so that the respondent has an opportunity to challenge the decision. Procedural due process of law and fundamental fairness require that a respondent deprived of an educational benefit be given notice and opportunity to contest the deprivation;<sup>19</sup> without knowing the individualized reasons why a recipient determined that the respondent

<sup>19</sup> See the “Role of Due Process in the Grievance Process” section of this preamble.



posed a threat to someone's physical health or safety, the respondent cannot assess a basis for challenging the recipient's removal decision. Recipients may choose to provide specialized training to employees or convene interdisciplinary threat assessment teams, or be required to take such actions under other laws, and § 106.44(c) leaves recipients flexibility to decide how to conduct an individualized safety and risk analysis, as well as who will conduct the analysis.

Changes: None.

*"provides the respondent with notice and an opportunity to challenge the decision immediately following the removal"*

Comments: One commenter stated that during any emergency removal hearing, schools should be required to share all available evidence with the respondent, permit that person an opportunity to be heard, and allow the respondent's advisor to cross-examine any witnesses. According to the commenter, if these full procedural rights are not extended, this provision would create a loophole that allows emergency measures to effectively replace a full grievance process. Commenters also argued that a recipient's emergency removal decisions would often be hastily made, and that recipients would ignore requirements that a removed student be given the opportunity to review or challenge the decision made by the recipient. Commenters argued that § 106.44(c) should include express language safeguarding students against abusive practices during the challenge procedure. One commenter suggested adding the word "meaningful" so the respondent would have "a meaningful opportunity" to challenge the removal decision, asserting that certain institutions of higher education in California have not consistently given respondents meaningful opportunities to "make their case." While supportive of § 106.44(c), one commenter suggested modifying this provision to require the recipient to send the respondent written notice of the specific facts that supported the recipient's decision to remove the student, so the respondent can meaningfully challenge the removal decision.

Some commenters asserted that if the respondent has a right to challenge the emergency removal, the recipient must offer an equitable opportunity for the complainant to contest an overturned removal or participate in the respondent's challenge process. Other commenters asked whether § 106.44(c) requires, or allows, a recipient to notify the complainant that a respondent has been removed under this provision, that a respondent is challenging a removal decision, or that a removal decision has been overturned by the recipient after a respondent's challenge.

Commenters argued that § 106.44(c) would also effectively mandate that an institution's employees must be trained to conduct hearings or other undefined post-removal procedures in the event that a respondent exercises the right to challenge the emergency removal. Commenters argued that this burden likely would require a dedicated officer or committee to carry out procedural obligations that did not previously exist, and these burdens were not contemplated at the time of the recipient's acceptance of the Federal funding. Commenters argued that § 106.44(c) would provide rights to at-will employees that are otherwise unavailable, restricting employment actions that are normally within the discretion of an employer.

Commenters requested clarification about the procedures for challenging a removal decision, such as: whether a respondent's opportunity challenge the emergency removal means the recipient must, or may, use processes under § 106.45 to meet its obligations, including whether evidence must be gathered, witnesses must be interviewed, or a live hearing with cross-examination must be held; whether the recipient, or respondent, will bear the burden of proof that the removal decision was correct or incorrect; whether the recipient must, or may, involve the complainant in the challenge procedure; whether the recipient must, or may, use the investigators and decision-makers that have been trained pursuant to § 106.45 to conduct the post-removal challenge procedure; and whether the determinations about an emergency removal must, or may, influence a determination regarding responsibility during a grievance process under § 106.45.

Discussion: The Department disagrees that § 106.44(c) poses a possible loophole through which recipients may bypass giving respondents the due process protections in the § 106.45 grievance process. The threshold for an emergency removal under § 106.44(c) is adequately high to prevent recipients from using emergency removal as a pretense for imposing interim suspensions and expulsions. We do not believe it is necessary to revise § 106.44(c) to prevent recipients from imposing "abusive" procedures on respondents; recipients will be held accountable for reaching removal decisions under the standards of § 106.44(c), giving recipients adequate incentive to give respondents the immediate notice and challenge opportunity following a removal decision. We do not believe that recipients will make emergency removal decisions "hastily," and a respondent who believes a recipient has violated these final regulations may file a complaint with OCR.

The Department does not want to prescribe more than minimal requirements on recipients for purposes of responding to emergency situations. We decline to require written notice to the respondent because minimal due process requires some kind of notice, and compliance with a notice requirement suffices for a recipient's handling of an emergency situation.<sup>20</sup> We decline to add the modifier "meaningful" before "opportunity" because the basic due process requirement of an opportunity to be heard entails an opportunity that is appropriate under the circumstances, which ensures a meaningful opportunity.<sup>21</sup> While a recipient has discretion (subject to FERPA and other laws restricting the nonconsensual disclosure of personally identifiable information from education records) to notify the complainant of removal decisions regarding a respondent, or post-removal challenges by a respondent, we do not require the complainant to receive notice under § 106.44(c) because not every emergency removal directly relates to the complainant. As discussed above, circumstances that justify removal must be "arising from the allegations of sexual harassment" yet may consist of a threat to the physical health or safety of a person other than the complainant (for example, where the respondent has threatened self-harm).<sup>22</sup>

The Department disagrees that § 106.44(c) requires a recipient to go through excessively burdensome procedures prior to removing a respondent on an emergency basis. The seriousness of the consequence of a recipient's decision to removal of a student or employee, without a hearing beforehand, naturally requires the school to meet a high threshold (i.e., an individualized safety and risk assessment shows that the respondent poses an immediate threat to a person's physical health or safety justifying removal). At the same time, § 106.44(c) leaves recipients wide latitude to select the procedures for giving notice and opportunity to challenge a removal.

A recipient owes a general duty under § 106.44(a) to respond to sexual harassment in a manner that is not deliberately indifferent. Where removing an individual on an emergency basis is necessary to avoid acting with deliberate indifference, a recipient must meet the requirements in § 106.44(c). The Department disagrees that § 106.44(c) imposes requirements on recipients that violate the Spending Clause, because recipients understand that compliance with Title IX will require dedication of personnel, time, and resources.<sup>23</sup> Because this provision does not prescribe specific post-removal challenge procedures, we do not believe recipients face significant burdens in training personnel to comply with new or unknown requirements; this provision ensures that the essential features of due process of law, or fundamental fairness, are provided to the respondent (i.e., notice and opportunity to be heard), and we believe that recipients are already familiar with these basic requirements of due process (for public institutions) or fair process (for private institutions).

In response to commenters' clarification requests, the post-removal procedure may, but need not, utilize some or all the procedures prescribed in § 106.45, such as providing for collection and presentation of evidence. Nothing in § 106.44(c) or the final regulations precludes a recipient from placing the burden of proof on the respondent to show that the removal decision was incorrect. Section 106.44(c) does not preclude a recipient from using Title IX personnel trained under § 106.45(b)(1)(iii) to make the emergency removal decision or conduct a post-removal challenge proceeding, but if involvement with the emergency removal process results in bias or conflict of interest for or against the complainant or respondent, § 106.45(b)(1)(iii) would preclude such personnel from serving in those roles during a grievance process.<sup>24</sup> Facts and evidence relied on during an emergency removal decision and post-removal challenge procedure may be relevant in a § 106.45 grievance process against the respondent but would need to meet the requirements in § 106.45; for example, a witness who provided information to a postsecondary institution recipient for use in reaching an emergency removal decision would need to appear and be cross-examined at a live hearing under § 106.45(b)(6)(i) in order for the witness's statement to be relied on by the decision-maker.

Changes: None.

<sup>20</sup> E.g., *Goss*, 419 U.S. at 578-79 (holding that in the public school context "the interpretation and application of the Due Process Clause are intensely practical matters" that require at a minimum notice and "opportunity for hearing appropriate to the nature of the case") (internal quotation marks and citations omitted).

<sup>21</sup> *Id.*

<sup>22</sup> As discussed in the "Section 106.6(e) FERPA" subsection of the "Clarifying Amendments to Existing Regulations" section of this preamble, the complainant has a right to know the nature of any disciplinary sanctions imposed on a respondent after the recipient has found the respondent to be responsible for sexual harassment alleged by the complainant, because the disciplinary sanctions are directly related to the allegations made by the complainant. By contrast, emergency removal of a respondent does not involve a recipient's determination that the respondent committed sexual harassment as alleged by the complainant, and information about the emergency removal is not necessarily directly related to the complainant. Thus, FERPA (or other privacy laws) may restrict a recipient's discretion to disclose information relating to the emergency removal.

<sup>23</sup> See discussion under the "Spending Clause" subsection of the "Miscellaneous" section of this preamble.

<sup>24</sup> Section 106.45(b)(1)(iii) requires all Title IX Coordinators, investigators, decision-makers, and persons who facilitate an informal resolution to be free from bias or conflicts of interest for or against complainants or respondents generally, or for or against any individual complainant or respondent.

*How OCR Will Enforce the Provision*

Comments: Commenters requested clarification about how OCR would enforce § 106.44(c), including what standard OCR would use in deciding whether a removal was proper; whether OCR would only find a violation if the recipient violates § 106.44(c) with deliberate indifference; whether violating this provision constitutes a violation of Title IX; whether OCR would defer to the determination reached by the recipient even if OCR would have reached a different determination based on the independent weighing of the evidence; whether a harmless error standard would apply to OCR's evaluation of a proper removal decision and only require reversing the recipient's removal decision if OCR thinks the outcome was affected by a recipient's violation of § 106.44(c); and whether OCR, or the recipient, would bear the burden of showing the correctness or incorrectness of the removal decision or the burden of showing that any violation affected the outcome or not.

Discussion: OCR will enforce this provision fully and consistently with other enforcement practices. OCR will not apply a harmless error standard to violations of Title IX, and will fulfill its role to ensure compliance with Title IX and these final regulations regardless of whether a recipient's non-compliance is the result of the recipient's deliberate indifference or other level of intentionality. Recipients whose removal decisions fail to comply with § 106.44(c) may be found by OCR to be in violation of these final regulations. As discussed above, a recipient may need to undertake an emergency removal under § 106.44(c) in order to meet its duty not to be deliberately indifferent to sexual harassment. However, OCR will not second guess the decisions made under a recipient's exercise of discretion so long as those decisions comply with the terms of § 106.44(c). For example, OCR may assess whether a recipient's failure to undertake an individualized risk assessment was deliberately indifferent under § 106.44(a), but OCR will not second guess a recipient's removal decision based on whether OCR would have weighed the evidence of risk differently from how the recipient weighed such evidence. While not every regulatory requirement purports to represent a definition of sex discrimination, Title IX regulations are designed to make it more likely that a recipient does not violate Title IX's non-discrimination mandate, and the Department will vigorously enforce Title IX and these final regulations.

Changes: None.

## Case Studies

### Case One

Rory lives on campus in a fraternity house. During an off-campus party, there were multiple reports of him very drunk and making sexual comments and groping women at the party. One specific event involved Rory grabbing a female athlete (on the swim team) and another team member pushing him off. Rory then began grabbing her breasts and touched her genitals over her jeans. Several other people attending the party pulled Rory off her.

Two females talked to their swim coach and the swim coach shared the details with the Title IX office. Rory had two previous Title IX complaints, one for lewd behavior (taking off his pants at a party while drunk and running around) and a complaint made by an ex-girlfriend last year that he had choked her to unconsciousness and had sex with her. The first complaint resulted in a probation and in the second, the reporting party only wanted him to stay away from her (they broke up after the incident).

Rory frequently jokes about sex and has a negative reputation on campus as someone who “is a player” and “you don’t want to be alone in a dark room with that guy.” Rory has said on social media that “I’m about three things. Drinking. Fucking Hoes. Making Benjamins.” Rory is a junior and studying business administration with a 2.4 GPA. There was mention that he had a previous restraining order off campus (his hometown is three hours from the college).

Currently, Rory has been telling people, “none of this happened, I wasn’t even drinking at the party.”

### Notes:

## Case Two

Asher is known around campus by many students as a little odd. He frequently asks women to go on dates with him. He also has hugged other students (without permission), though he does wear a mask given the COVID-19 pandemic. There have not been any formal Title IX complaints, although there have been several notifications to the BIT and two discussions with the conduct office around his behavior.

Asher has been unable to stop these behaviors, despite having a desire to do so. Recently, he had an incident with a student, Mara. He approached her for a hug and began to say, "You are very pretty, I would like to..." when she yelled at him and shoved a nearby chair in front of her. Asher tried again saying, "No, I just want to show you..." and she yelled again. A few students pushed him back and told him to leave her alone. He complied and Mara later went in to make a Title IX complaint.

Mara is not willing to hear about any of his mental health. She reported that she had talked to her parents and Mara called them again during the meeting and passed the phone to the Title IX coordinator. Her parents demanded that Asher be moved off campus for Mara's safety. Both Asher and Mara live on campus, although in separate residence halls.

After this meeting, several students made an appointment to come into the office with Asher. They explained that Asher didn't mean anything by this, Mara overreacted and "everyone knows this is how he is. He wasn't going to hurt her."

### Notes:

### Case Three

Carlson is a first-year student who lives off-campus and attends community college. Carlson began following a female student, Baily's, TikTok account. He knows her from a class they both attend. Carlson was able to get her account information from another classmate who knew Baily. Carlson began following her Instagram and Tiktok accounts and sending her text messages following Friday's class.

Baily responded by saying, "Who is this?" and Carlson said, "I just wanted you to know that I saw your Instagram pictures and think your ass is rocking. I think you should spend some time with a certain fellow." He then continues to describe the "certain fellow" and his penis and how much he wants to her to spend some time with it. Baily texted back twice trying to let him down easily, but he continued with more aggressive texts. "Listen, we both know what you want. I'm a dom. You are a sub. You will do what I tell you." She told him, "Stop texting me" and then blocked him from TikTok and stopped responding to his texts.

Carlson continued to text her throughout the weekend. Baily avoided looking at any of these texts and left her phone in her room most of the weekend because she didn't want to deal with him. She told few friends on Sunday about the situation and they opened the messages on her phone. There were literally 100s of texts, videos, pictures and angry statements made. The general tone is increasingly sexualized, including threats to tie her up and rape her and comments that he knows where she lives on campus and maybe he should stop by the visit. The texts became increasingly upset when she didn't respond, and he said if she doesn't meet him first thing Monday morning in a stairwell before their class, that, "I will take that as evidence that you need me to take you by force. And I will not hesitate."

This worried Baily and she told her RA who shared her concerns. Her RA passed the concern forward to her administrator on call and Baily was walked over to the Title IX office. The coordinator took the complaint and screen captures of the 100s of texts, photos and videos that were shared.

There have been two other complaints that were made against Carlson by women he followed on social media and made advances toward. He was found non-responsible in both cases, though neither had the level of sexual explicitness or threats of rape.

#### Notes:





LOOKING GLASS

# Looking Glass Overview

## Escalating Elements

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

## Mitigating Elements

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



LOOKING GLASS

## Scoring and Interventions

For Looking Glass scoring, elements should be scored 0 if the item is not present in the writing sample or social media post and 2 if it is clearly present. Scores of 1 are given if the element is vague or poorly defined. The final score is then obtained by subtracting the mitigating elements from the escalating elements. This provides a range from -20 to +20. Overall, a score of -20 would indicate an ideal where there are no escalating elements and all the mitigating elements. A score of +20 would indicate a perfect negative score, with all of the escalating elements and none of the mitigating ones. The Looking Glass score can then be used to make a decisions regarding interventions, referring to the suggestions in the table below.

Score	Risk	General Summary	Suggested Interventions
<b>-20 to -5</b>	<b>MILD</b>	Very low risk related to the sample. Typically, contextual factors have reduced any risk that may have been present and this likely a very transient threat.	<ul style="list-style-type: none"> <li>– Possibly no direct action</li> <li>– Provide guidance and education to referral source</li> <li>– Reach out to student; assess situation and determine needs</li> <li>– Connect with teachers, school support resources, etc., for support and to gather more information</li> <li>– Provide resources to student as appropriate</li> </ul>
<b>-4 to 2</b>	<b>MODERATE</b>	Elements of concern present in the writing content or post. Consider further threat assessment and information gathering to better assess the risk. It would be unlikely that suspension or separation would occur at that stage.	<ul style="list-style-type: none"> <li>– Consider the voluntary use of violence risk or threat assessment</li> <li>– Hold individualized meeting with student and parent/guardian to identify a safety plan</li> <li>– Discuss how to reduce triggers, increase protective factors and review/adjusted plan regularly</li> <li>– Use bullying protocols (if needed)</li> <li>– Refer for student discipline and/or behavior management process; address emerging behaviors under an academic disruption/discipline policy</li> <li>– Engage in skill-building for social and emotional learning, conflict management, interpersonal conflict resolution, problem-solving</li> </ul>
<b>3 to 9</b>	<b>ELEVATED</b>	A higher level of concern that should trigger a required, in-person violence or threat assessment process. It is more likely that a suspension or separation would occur pending a mandated evaluation.	<ul style="list-style-type: none"> <li>– Evaluate the need to assess immediate safety through welfare/safety check with in-house counseling staff, SRO or police</li> <li>– Meet with student and parent/guardian to assess and plan</li> <li>– Coordinate a mandated assessment with BIT/CARE staff trained in violence and/or threat assessment.</li> <li>– Referral to support services such as counseling, ADA/504, IEP</li> <li>– Coordinate transitions at beginning and end of in school or out of school suspensions with school discipline.</li> <li>– Coordinate with school resource officer, local law enforcement, etc. to discuss plan for safety, community, response, etc.</li> </ul>
<b>10 to 20</b>	<b>CRITICAL</b>	Highest level of concern indicating many of the elements in the writing sample match previous attackers' writings. Likely removal of student from campus, coordination with police around arrest and mental health around involuntary admission.	<ul style="list-style-type: none"> <li>– Immediate wellness check/initiate evaluation for involuntary hold/initiate suicide protocols</li> <li>– Required contact with parent/emergency contact</li> <li>– Evaluate need for emergency notification to school community or to specific, impacted parties</li> <li>– Initiate mandated assessment once immediate safety has been established</li> <li>– Determine and share process of assessment and action planning with parent/guardian</li> <li>– Coordinate w/necessary parties (school resource officer, local law enforcement, FUSION center, discipline, legal and/or threat consult, etc.) to create plan for safety, response, interventions, suspension, etc.</li> <li>– Connect w/off-campus resources as appropriate such as case manager, child protective services, juvenile justice</li> <li>– Provide guidance, support, and safety planning to impacted parties, such as teachers and other students</li> </ul>



LOOKING GLASS

# Looking Glass Scoring Sheet

## Escalating Elements

Element		Rationale	Score
Author Qualities			
1.	Suicidal Content		
2.	Isolation and Hopelessness		
3.	Fame/Meaning Seeking		
4.	Injustice/Grievance Collecting		
Tone Qualities			
5.	Hardened, Black/White Thinking		
6.	Graphic and Violent Descriptions		
Content Qualities			
7.	Target Detail		
8.	Weapon Detail		
9.	Threat Plan Detail		
10.	Previous Attack Detail		
Total			0

## Mitigating Elements

Element		Rationale	Score
Author Qualities			
1.	Trolling		
2.	Developmental Delay		
3.	Tangential, Rambling or Incoherent		
4.	International, Non-Native Language		
5.	Creative Author		
Content Qualities			
6.	Writing for Class		
7.	Therapeutic Journal		
8.	Political or Opinion		
9.	Retaliatory Expression		
10.	Affective/Reactive		
Total			0
Final Score			0



LOOKING GLASS

## Scoring and Interventions

For Looking Glass scoring, elements should be scored 0 if the item is not present in the writing sample or social media post and 2 if it is clearly present. Scores of 1 are given if the element is vague or poorly defined. The final score is then obtained by subtracting the mitigating elements from the escalating elements. This provides a range from -20 to +20. Overall, a score of -20 would indicate an ideal where there are no escalating elements and all the mitigating elements. A score of +20 would indicate a perfect negative score, with all of the escalating elements and none of the mitigating ones. The Looking Glass score can then be used to make a decisions regarding interventions, referring to the suggestions in the table below.

Score	Risk	General Summary	Suggested Interventions
<b>-20 to -5</b>	<b>MILD</b>	Very low risk related to the sample. Typically, contextual factors have reduced any risk that may have been present and this likely a very transient threat.	<ul style="list-style-type: none"> <li>• Possibly no direct action</li> <li>• Provide guidance and education to referral source</li> <li>• Reach out to student; assess situation and determine needs</li> <li>• Connect with teachers, school support resources, etc., for support and to gather more information</li> <li>• Provide resources to student as appropriate</li> </ul>
<b>-4 to 2</b>	<b>MODERATE</b>	Elements of concern present in the writing content or post. Consider further threat assessment and information gathering to better assess the risk. It would be unlikely that suspension or separation would occur at that stage.	<ul style="list-style-type: none"> <li>• Consider the voluntary use of violence risk or threat assessment</li> <li>• Hold individualized meeting with student and parent/guardian to identify a safety plan</li> <li>• Discuss how to reduce triggers, increase protective factors and review/adjusted plan regularly</li> <li>• Use bullying protocols (if needed)</li> <li>• Refer for student discipline and/or behavior management process; address emerging behaviors under an academic disruption/discipline policy</li> <li>• Engage in skill-building for social and emotional learning, conflict management, interpersonal conflict resolution, problem-solving</li> </ul>
<b>3 to 9</b>	<b>ELEVATED</b>	A higher level of concern that should trigger a required, in-person violence or threat assessment process. It is more likely that a suspension or separation would occur pending a mandated evaluation.	<ul style="list-style-type: none"> <li>• Evaluate the need to assess immediate safety through welfare/safety check with in-house counseling staff, SRO or police</li> <li>• Meet with student and parent/guardian to assess and plan</li> <li>• Coordinate a mandated assessment with BIT/CARE staff trained in violence and/or threat assessment.</li> <li>• Referral to support services such as counseling, ADA/504, IEP</li> <li>• Coordinate transitions at beginning and end of in school or out of school suspensions with school discipline.</li> <li>• Coordinate with school resource officer, local law enforcement, etc. to discuss plan for safety, community, response, etc.</li> </ul>
<b>10 to 20</b>	<b>CRITICAL</b>	Highest level of concern indicating many of the elements in the writing sample match previous attackers' writings. Likely removal of student from campus, coordination with police around arrest and mental health around involuntary admission.	<ul style="list-style-type: none"> <li>• Immediate wellness check/initiate evaluation for involuntary hold/initiate suicide protocols</li> <li>• Required contact with parent/emergency contact</li> <li>• Evaluate need for emergency notification to school community or to specific, impacted parties</li> <li>• Initiate mandated assessment once immediate safety has been established</li> <li>• Determine and share process of assessment and action planning with parent/guardian</li> <li>• Coordinate w/necessary parties (school resource officer, local law enforcement, FUSION center, discipline, legal and/or threat consult, etc.) to create plan for safety, response, interventions, suspension, etc.</li> <li>• Connect w/off-campus resources as appropriate such as case manager, child protective services, juvenile justice</li> <li>• Provide guidance, support, and safety planning to impacted parties, such as teachers and other students</li> </ul>

## Incel Risk Rubric Overview

### Thinking

Thinking qualities are related to cognitions the individual has that increase the buy-in to the incel worldview. These beliefs are often hardened and inflexible, supported by online discussion boards and those the individual surrounds himself with on a daily basis.

1. **Misogyny:** Here the individual has an over-arching, negative and limited view of women. He describes women in an objective, one-dimensional manner and see the heart of their worth as a sexual possession. This often manifests in seeing women in a binary, like Madonna or whore, saint or sinner, Stacy or Becky. He sees a woman's beauty through a Caucasian, euro-centric perspective (e.g., blonde, tall, blue eyes). When these women are outside of his reach, the only access the incel believes he has is through killing Chads or raping Stacys.
2. **Racism:** There is a lack of appreciation for diversity or any divergence and a sense of superiority of the white race over all others. This would also include anti-Semitic beliefs, homophobic, and transphobic beliefs.
3. **Blackpill:** There is an acceptance of the superiority in the genetic characteristics of the alpha male and female. He accepts the futility of the biological fate he has been assigned and lives with a sense of hopelessness, inferiority, and growing rage at the lack of sexual prospects available to him. Given the fatalistic view of this thinking, their only access to women becomes killing Chads or resorting to Stacy rape fantasies.
4. **Inaccurate Self-Conception:** This bi-furcated construct exists on two extremes on a spectrum. On the one end, the faulty view of self is overly negative and leads to low self-esteem and value. On the other end, he sees himself as all-powerful and possesses an overly inflated sense of value and entitlement.
5. **Fame seeking:** There is a larger desire to achieve fame and make a statement, to be the chosen one with a sense of purpose that al-luded him throughout his life. This may come at the end of a long struggle where they find worth in the idea of communicating a larger message to society to set things right and un-mask the injustices they have endured.

### Feelings/Emotions

These are the sentiments and corresponding reactions to their thoughts or experiences from others. They are often intense feelings that drive behaviors.

6. **Rage:** There is an intense anger and rage directed toward women, alpha males, other non-white males seen as "less than," and/or the society at large for contributing to his marginalized status without a chance for redemption.
7. **Hopelessness:** A pervasive sense of sadness and desperation at the prospective of considering the future. There is a sense of futility and desperateness regarding any positive change in the future
8. **Catastrophe:** Unfortunate negative events such as a breakup or difficulty obtaining a first date are given a larger, catastrophic emphasis that provide a frame for the individual being a worthless failure.
9. **Mental or Physical Disability:** A mental or physical illness that creates an increased difficulty in social connection with both interaction and reading social cues. There is a difficulty in understanding the rules of flirting and he struggles to form relationships. This most commonly is related to Asperger's/Autism Spectrum Disorder (ASD), depression, social anxiety or personality disorders.
10. **Abandoned:** Pervasive feelings of being misunderstood, neglected, abandoned or deserted. He feels alone in the world and that no one seems to care about his troubles or descent into increasing pain.

## Behavior

These behaviors are often the outward manifestations of the cognitions, feelings and emotions. Behaviors are particularly important as they relate to the risk factors outlined in chapter eight and provide observable data that can be consistently acted upon by a BIT/CARE team.

- 11. Approach Behaviors:** A term first coined by Meloy (2014), this describes behaviors that threaten others. They are often impulsive, affective, adrenaline filled actions that should be seen as approach behaviors moving toward harming attractive women, the alpha males who have them and a society that unjustly supports this biological deck stacked against the incel.
- 12. Howling:** A term coined by Calhoun and Westin (2009), howling refers to conditional, transient threats that are made against others primarily to intimidate and to force a fight, flight, or flee reaction. This howling often occurs on social media.
- 13. Suicide:** The person makes a suicide attempt or statement. This is often done out of frustration and may be an attempt to control and influence a woman or others. These suicide attempts can occur frequently and are often related to the incel's frustration in dating relationships
- 14. Past Attacks:** He references past attacks, shootings or negative actions toward women to praise to other violent actors. This can occur in writing, on social media or be spoken to friends, classmates and co-workers. This may include an infatuation with prior killers/actors and collecting information about them.
- 15. Redpill:** He seeks to change his behavior, status or worth through physical exercise, cosmetic surgery, or obtaining wealth to attract women. He believes these efforts will make a less genetically worthy male be able to obtain a higher rated female through altering aspects of his appearance, increasing wealth or status.

## Environmental

These environmental factors represent historical and cumulative experiences that further escalate the individual toward isolation, hardened thoughts and potential violence.

- 16. Incel Materials:** He is frequently exposed to incel and/or white supremacist/nationalist, homophobic, ableist, ageist, transphobic, or anti-Semitic ideas through peers, media, and family messaging and/or websites and discussion boards. Alternative viewpoints are routinely dismissed without exploration or empathy.
- 17. Rejection:** Women reject advances from the person related to sexual approach with the assumed reason being related to genetics, lack of women's interest, or their preference for males who are superior.
- 18. Bullied:** He is teased about his appearance, especially being sexually unattractive or unable to find a sexual partner. This bullying often occurs in front of others, further escalating his difficulty finding connections with others and embarrassing him, causing feelings of negative self-worth or lack of acceptance from others.
- 19. Failure to Change:** Previous attempts at changing thoughts or behaviors have been met with frustration and exacerbation. These change attempts are often steps in the right direction such as attending therapy, learning more about dating from apps or self-help books, and listening to and connecting with friends.
- 20. Free Fall:** He exhibits a low sense of self-worth and has experienced difficulty finding acceptance from others, such as friends or parents. There may have been abuse, traumatic loss, or family change/discord, all feeding into feelings of worthlessness.



## APPENDIX H

### Incel Terms and Descriptions

<b>Alpha Male</b>	A bold, confident leader, opposite of a Beta	<b>Femoid/Foid</b>	Demeaning term referring to women as less than human
<b>AMOG</b>	"Alpha Male of Group"	<b>FOOS</b>	"Fall on One's Sword"
<b>Becky</b>	An average young woman, subordinate to a Stacy in looks and status	<b>Go ER/ER/Go Rodger</b>	To go on a killing spree, like Elliot Rodger; the letters E and R are sometimes capitalized in unrelated words (i.e. sECuRity)
<b>Betabux</b>	A romantic relationship in which the man provides financially for his partner; often used to imply that the woman is only with him for his money	<b>Heightpill</b>	A subset of blackpill, which suggests women are primarily drawn to tall men
<b>Beta Male</b>	A weak man; the opposite of an alpha	<b>Incel/Inkwell</b>	Involuntarily celibate man; common subsets include: <b>Baldcel:</b> Bald or balding <b>Currycel:</b> Indian <b>Clowncel:</b> Identifies with and admires the Joker from <i>Batman</i> <b>Fakecel:</b> Pretending to be incel to be edgy or to fit in <b>Framecel:</b> A man with the bone structure of a young teen <b>Gymcel:</b> Believes he can compensate with muscles <b>Heightcel/Shortcel:</b> A short man who is an incel because of his height <b>Mentalcel/ medcel:</b> Has psychological illnesses or medical issues <b>Workcel:</b> Too preoccupied with work for a relationship
<b>Big Black Cock Theory (BBC)</b>	The theory that black men are inherently more virile and sexually appealing, making them able to "dickmog" (see mogging) other races		
<b>Blackpill</b>	The belief that genetics predetermine one's status and desirability; women are only attracted to those with superior genes		
<b>Bluepill</b>	A term taken from the Matrix movies that generally means to ignore reality; in this context it is the belief that relationships are formed based on compatibility and kindness and respect toward women		
<b>-Cel</b>	This suffix can be used to define one's subset within the incel community based on physical features, interests, race, or defining traits (e.g., a gingercel is an incel who has red hair)	<b>Juggernaut law</b>	The theory that you can't stop a woman's dating potential; unattractive and flawed women make men feel like they have a chance, so they will still have their pick of men
<b>Chad</b>	An ideal male specimen; Chads can attract nearly all women easily; ethnic counterparts are <b>Tyrone</b> (black), <b>Chaddam</b> (Arab), <b>Chadpreet</b> (Indian), <b>Chang</b> (East Asian)	<b>LDAR</b>	"Lie Down and Rot"
<b>Chadfish</b>	Pretending to be an attractive man in your photos when you are not one	<b>-Maxx/-Maxxing</b>	An attempt to improve dating chances by improving an aspect of one's life (e.g., looksmaxx)
<b>Cope</b>	Adopting a false but comforting belief to avoid the harsh truth; often used by trolls to mock everyday activities	<b>Mewing</b>	An attempt to improve one's jawline by holding the tongue hard against the roof of the mouth; created orthodontist Mike Mew
<b>Cuck</b>	Short for cuckold, this is a man with an unfaithful wife/girlfriend; also used for men who are considered weak or servile and often used as a derogatory term for men with moderate or progressive views	<b>Mog/Mogging</b>	The shortened form of AMOG, to mog is to be more good-looking or superior in some way
<b>Day of Retribution</b>	Idealized day in which incels will strike back against Chads and women; also referred to as "Beta Uprising" or "Incel Rebellion"	<b>My Twisted World</b>	Name of Rodgers' manifesto, which is often seen as a basis of incel philosophy
		<b>NEET</b>	"Not in education, employment, or training"
		<b>Noodlewhore</b>	An Asian woman

<b>Normie</b>	An average boring person, someone who is average in looks, between a Chad and an incel	<b>Saint Alek</b>	Alek Minassian (Toronto Van Attack)
<b>PSL</b>	An acronym for the forums "PUAhate.com/Sluthate/Lookism.net"	<b>Saint Elliot</b>	Elliot Rodger (Isla Vista Killings)
<b>Pump and dump</b>	Having sex with a woman who is looking for a relationship with no intention of pursuing a relationship	<b>Saint Yogacel</b>	Scott Beierle (Tallahassee Yoga Studio Shooting)
<b>Redpill</b>	In the Matrix movies, the redpill wakes one up to the truth of reality; in incel circles, it is the belief that all women are attracted to the most alpha man and that one can compensate for poor genes by working out or gaining wealth or status	<b>Soyboy</b>	An effeminate, feminist or non-fighting man, with low athleticism; incels believe soy lowers testosterone
<b>RGIF</b>	"Raping Girls is Fun"	<b>Stacy</b>	The female counterpoint to a Chad; the ideal woman who is out of reach for any non-Chad man
<b>Rope/Roping</b>	To commit suicide	<b>Supreme Gentleman</b>	How Elliot Rodger referred to himself; women are attracted to Chads even though incels are "Supreme Gentlemen"
<b>Ropfuel/Suifuel</b>	Suicide fuel; something deeply depressing that drives self-hate (e.g., an attractive woman in a relationship with someone you consider less attractive than yourself)	<b>Thot</b>	A woman who has many casual sexual encounters
		<b>The Wall/Agepill/milkmired</b>	The inevitability of age making men and women less fertile and attractive

## Incel Indoctrination Rubric (IIR): Summary and Research

THINKING		
<b>1. Misogyny</b>	He has an over-arching, negative and limited view of women. He describes women in an objective, one-dimensional manner and sees the heart of their worth as that of a sexual possession. He rates their worth on a 1-10 scale. This item encompasses homophobic and transphobic beliefs.	1, 2, 3, 5, 7-14, 18-25, 27, 29, 31-33, 35-43, 45-48, 50
<b>2. Racism</b>	There is a lack of appreciation for diversity or any divergence from the straight, white, cisgender ideal and a sense of superiority of the white race over all others. This would also include antisemitic beliefs.	6, 7, 11, 18, 20, 21, 24, 27, 29, 37, 38, 41, 45, 49
<b>3. Blackpill</b>	He believes that genetics predetermine his status and desirability and cannot be overcome. He has a sense of inferiority, hopelessness, and growing rage at the lack of sexual prospects available to him.	1, 3-5, 9, 10, 13, 18, 19, 21, 24, 25, 29, 39, 41, 43, 45-47
<b>4. Inaccurate Self-Concept</b>	This bi-bifurcated construct exists on two extremes on a spectrum – either an overly negative self-worth that leads to low self-esteem and value or an overly inflated sense of value and entitlement.	2, 4, 10, 11, 14, 15, 18-22, 24, 25, 27-33, 35, 37-39, 41, 43, 45, 47
<b>5. Fame Seeking</b>	There is a strong desire to achieve fame and make a statement. He thinks that he is the chosen one, with a sense of purpose that has alluded him throughout his life. He often finds worth in the idea of communicating a message to society to set things right and unmask the injustices he has endured.	2, 5, 7, 8, 11, 13, 14, 18-21, 23-25, 27-33, 35, 37-41, 43, 46, 48
FEELING		
<b>6. Rage</b>	There is an intense anger and rage directed toward women, alpha males, other non-white males (seen as “less than”), and/or the society at large for contributing to his marginalized status without a chance for redemption. He feels justified because of the unfairness of his situation and the need for revenge.	1, 3, 5, 9-11, 13, 14, 16-21, 24, 25, 27-31, 33, 36-38, 43, 39, 40, 41, 43-45, 47, 48, 50
<b>7. Hopelessness</b>	He experiences a pervasive sense of sadness and desperation at the prospective of considering the future. There is a sense of futility and desperateness regarding any positive change in the future.	1, 3, 6, 9, 10, 13-22, 24, 25, 28, 29, 32, 33, 36-39, 41, 43, 47
<b>8. Catastrophe</b>	Unfortunate negative events, such as a breakup or difficulty obtaining a first date, are given a larger, catastrophic emphasis that provides a frame for the individual seeing himself as a worthless failure.	1, 5, 8-11, 13-16, 18-22, 24, 25, 27-30, 32-35, 37-39, 41-43, 47
<b>9. Disability</b>	There is a mental or physical illness or disability that creates an increased difficulty in social connection with both interaction and reading social cues. Because of this, he struggles to form relationships.	1, 2, 3, 10, 15, 18, 20, 22, 24, 26, 29, 37-39, 42, 44
<b>10. Abandoned</b>	He experiences pervasive feelings of being misunderstood, neglected, abandoned or deserted. He feels alone in the world and that no one cares about his troubles or descent into increasing pain.	1-4, 7-10, 13-15, 18-22, 24, 25, 28, 29, 32, 33, 37-39, 41-43, 47
BEHAVIOR		
<b>11. Approach Behaviors</b>	A term first coined by Meloy (2014), this describes behaviors that threaten others. These behaviors are often impulsive, affective, adrenaline filled actions moving toward harming attractive women, alpha males who date them, and a society that unjustly supports the biological deck stacked against the incel.	3, 12-14, 16-18, 20-22, 24, 27, 31-33, 35-41, 44, 50
<b>12. Howling</b>	A term coined by Calhoun and Westin (2009), howling refers to conditional, transient threats that are made against others primarily to intimidate and to force a fight, flight, or flee reaction. He frequently expresses frustration toward women, alpha males, and/or society at large, often on social media.	1, 5, 10, 12, 14, 15, 18, 20, 22, 24, 27-30, 36-43, 47, 48, 50
<b>13. Suicide</b>	He makes a suicide attempt or statement (often as a threat of murder/suicide). This is often done out of frustration and may be an attempt to control and influence a woman or others. These suicide attempts can occur frequently and are often related to the incel's frustration in dating relationships.	1, 3-6, 10, 11, 13, 14, 16-18, 20-22, 24, 26, 28, 29, 32, 35-39, 41, 43, 46, 47, 49
<b>14. Past Attacks</b>	He references past attacks, shootings or negative actions toward women to praise other violent actors. This may include an infatuation with prior killers/actors and/or collecting information about them.	2, 13, 22, 24, 28, 29, 32, 37-39, 41, 45, 50
<b>15. Redpill</b>	He seeks to change his appearance, behavior, status or worth through physical exercise, cosmetic surgery, or obtaining wealth in order to overcome his genetic deficiencies and attract women.	8, 10, 13, 14, 21, 23, 24, 28, 37, 39, 40
ENVIRONMENT		
<b>16. Incel Materials</b>	He is frequently exposed to and engages in incel, white supremacist/nationalist, homophobic, transphobic, ableist, ageist, and/or antisemitic ideas through peers, media, family messaging and/or online.	3, 21, 22, 24, 27, 29, 30, 34, 37-39, 41, 46
<b>17. Rejection</b>	Women reject sexual or romantic advances from him with the assumed reason being related to his genetics, lack of women's interest, or their preference for men who are superior. These continued rejections feed into his feelings of futility at attempts at change or continued efforts to attract women.	1, 3, 7-11, 13, 15, 17-22, 24, 25, 27, 29, 32-34, 37-39, 41, 43-45, 47
<b>18. Bullied</b>	He is often teased about his appearance, sexual unattractiveness or inability to find a sexual partner. Bullying often occurs in front of others, causing feelings of negative self-worth or lack of acceptance.	1, 2, 9, 11, 15, 18, 19, 21, 22, 24, 28, 29, 32, 38, 39, 47
<b>19. Failure to Change</b>	Previous attempts at changing thoughts or behaviors in the pursuit of romantic or sexual relationships have been met with frustration and exacerbation, leading to an unwillingness to continue these efforts.	5, 8-10, 13, 14, 16, 18-22, 24, 28, 29, 32, 36-39, 42, 43
<b>20. Free Fall</b>	There may have been abuse, traumatic loss, or family change/discord, all feeding into feelings of worthlessness. Often a triggering event leads to an increase in anger or tendencies toward violence.	1, 2, 5, 6, 9, 13, 14, 16, 18-22, 24, 26, 28, 29, 32, 33, 37-39, 42, 43, 47

# Incel Indoctrination Rubric (IIR): Summary and Research

## CASES REVIEWED

1. Tsuyama Massacre, 5/21/1938, Kamo, Tsuyama, Japan
2. Rose-Mar College of Beauty Shooting, 11/13/1966, Mesa, Arizona
3. St. Pius X High School Shooting, 10/27/1975, Ottawa, Ontario, Canada
4. Queen Street Massacre, 12/8/1987, Melbourne, Victoria, Australia
5. École Polytechnique Massacre, 12/6/1989, Montreal, Quebec, Canada
6. University of Iowa Shooting, 11/1/1991, Iowa City, Iowa
7. Oklahoma City Bombing, 4/19/1995, Oklahoma City, Oklahoma
8. Unabomber, 1978-1996
9. Pearl High School Shooting, 10/1/1997, Pearl, Mississippi
10. Thurston High School Shooting, 5/20-21/1998, Springfield, Oregon
11. Columbine Shooting, 4/20/1999, Littleton, Colorado
12. Rancho Cordova Massacre, 8/31/2001, Rancho Cordova, California
13. Sacramento Rampage, 9/10/2001, Sacramento, California
14. Arizona Nursing College Shooting, 10/28/2002, Tucson, Arizona
15. Rocori High School Shooting, 9/24/2003, Cold Spring, Minnesota
16. Platte Canyon School Hostage Crisis, 9/27/2006, Bailey, Colorado
17. Amish Schoolhouse Shooting, 10/2/2006, Nickel Mines, Pennsylvania
18. Virginia Tech Shooting, 4/16/2007, Blacksburg, Virginia
19. Akihabara Massacre, 6/8/2008, Chiyoda, Tokyo, Japan
20. Henry Ford Community College Shooting, 3/10/2009, Dearborn, Michigan
21. LA Fitness Shooting, 8/4/2009, Collier, Pennsylvania
22. Sandy Hook Shooting, 12/14/2012, Newtown, Connecticut
23. Boston Marathon Bombing, 4/15/2013, Boston, Massachusetts
24. Isla Vista Killings, 5/23/2014, Isla Vista, California
25. Portsmouth Stabbings, 6-7/2014, Portsmouth, UK
26. Germanwings Flight 9525, 3/24/2015, French Alps
27. Charleston Church Shooting, 6/17/2015, Charleston, South Carolina
28. Live TV Shooting, 8/26/2015, Roanoke, Virginia
29. Umpqua Community College Attack, 10/1/2015, Roseburg, Oregon
30. 4Chan Threat, 10/1/2015, Philadelphia, Pennsylvania
31. Planned Parenthood Shooting, 11/27/2015, Colorado Springs, Colorado
32. Pulse Nightclub Shooting, 6/12/2016, Orlando, Florida
33. Nice Truck Attack, 7/14/2016, Nice, France
34. Lucky 97 Security Guard, 7/31/2016
35. Las Vegas Music Festival Shooting, 10/1/2017, Las Vegas, Nevada
36. Texas Church Shooting, 11/5/2017, Sutherland Springs, Texas
37. Aztec High School, 12/7/2017, Aztec, New Mexico
38. Stoneman Douglas High School Shooting, 2/14/2018, Parkland, Florida
39. Toronto Van Attack, 4/23/2018, Toronto, Ontario, Canada
40. United States Attempted Mail Bombing, 10/2018, Aventura, Florida
41. Tallahassee Yoga Studio Shooting, 11/2/2018, Tallahassee, Florida
42. Capital Gazette Shooting, 12/28/2018, Annapolis, Maryland
43. Women's March Threat, 01/2019, Provo, Utah
44. Mall of America Attack, 04/12/2019, Bloomington, Minnesota
45. Sudbury Michael's Stabbing, 06/03/2019, Sudbury, UK
46. Dallas Federal Courthouse Shooting, 6/17/2019, Dallas, Texas
47. Dayton Shooting, 8/4/2019, Dayton, Ohio
48. Chicago Women's Reproductive Health Clinic Threat, 8/21/2019, Chicago, Illinois
49. German Hookah Bar Attack, 2/19/20, Hanau, Germany
50. Cyberstalking Case, 4/21/2020, Los Angeles, California

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# Incel Indoctrination Rubric (IIR): Scoring Guide

	NOT PRESENT (0 Points)	MINOR TRAITS (.25 Points)	MODERATE TRAITS (.50 Points)	MAJOR TRAITS (.75 Points)	FULLY PRESENT (1 Point)
<b>THINKING</b>					
<b>1. Misogyny</b>	<ul style="list-style-type: none"> <li>Believe women have a fluid, diverse value</li> <li>Respect for agency and personal choice</li> <li>Value diversity</li> </ul>	<ul style="list-style-type: none"> <li>A preference to see women in certain roles</li> <li>Not vocalized unless asked</li> <li>Preference for certain physical traits in women</li> </ul>	<ul style="list-style-type: none"> <li>Outspoken and opinionated belief about women's roles</li> <li>Lack of appreciation for a woman's individual choice</li> <li>Notion of ideal beauty</li> </ul>	<ul style="list-style-type: none"> <li>See women only as partners or sexual conquests for men</li> <li>Debate and insult those who disagree</li> <li>Vague threats toward women</li> </ul>	<ul style="list-style-type: none"> <li>Believe women should be controlled by men</li> <li>Seek out like-minded people</li> <li>Make threats, attend or organize protests, insult others</li> </ul>
<b>2. Racism</b>	<ul style="list-style-type: none"> <li>Appreciate diversity</li> <li>Respect for all races</li> <li>Recognize systematic oppression and unconscious biases work to change them</li> </ul>	<ul style="list-style-type: none"> <li>Express racist, anti-Semitic thoughts, though often subtle and defended on other grounds</li> <li>Deny racism, but words or posts display otherwise</li> </ul>	<ul style="list-style-type: none"> <li>Outspoken racism and/or antisemitism</li> <li>Deny systematic oppression and white privilege</li> </ul>	<ul style="list-style-type: none"> <li>Espouse the superiority of white, straight, cisgender people</li> <li>Engage in harmful debate and insult those who disagree</li> <li>Vague racist or Antisemitic threats</li> </ul>	<ul style="list-style-type: none"> <li>Believe that white men are the truly oppressed class in today's society</li> <li>Espouse to the BBC Theory</li> <li>Display anger at interracial relationships</li> </ul>
<b>3. Blackpill</b>	<ul style="list-style-type: none"> <li>Unaware of this term or philosophy or reject its basic premise</li> </ul>	<ul style="list-style-type: none"> <li>Aware of blackpill philosophy and vague about their feeling towards it or unaware but argue there is a biological and genetic element to beauty that is a leading component of attraction</li> </ul>	<ul style="list-style-type: none"> <li>Believe the genetics play a primary role in beauty and it is deterministic</li> <li>Reaffirmed in their genetic make up or angry or sad about their deficiencies</li> </ul>	<ul style="list-style-type: none"> <li>Subscribe to Chad/Stacy ideal</li> <li>Explain relationship success or failures based on this concept</li> <li>Share the ideas freely, attempting to introduce the concept and build connections</li> </ul>	<ul style="list-style-type: none"> <li>See genetics as the only factor in sexual attraction</li> <li>Experience either extreme depression and hopelessness or empowerment based on their personal genetic attractiveness</li> </ul>
<b>4. Inaccurate Self-Concept</b>	<ul style="list-style-type: none"> <li>Have a healthy self-concept</li> <li>See themselves accurately with a mixture strengths and deficiencies</li> </ul>	<ul style="list-style-type: none"> <li>A slight sense of low-self-esteem, or a slightly over-inflated sense of self-worth and confidence</li> <li>May be willing to change based on input from others</li> </ul>	<ul style="list-style-type: none"> <li>Pronounced negative self-esteem or an overly confident sense of their value and attributes</li> <li>Committed to seeing themselves this way and resist alternative opinions to shift their viewpoint</li> </ul>	<ul style="list-style-type: none"> <li>Strongly held belief about their worth based on appearance, social skills or intelligence</li> <li>Seek others who support their self-view</li> <li>Believe these traits are unchangeable</li> </ul>	<ul style="list-style-type: none"> <li>Blind-spot to their self-concept that radically over- or under-estimates their appearance, dating abilities or intelligence</li> <li>Either despondent about their self-worth or have an all-powerful sense of entitlement</li> </ul>
<b>5. Fame Seeking</b>	<ul style="list-style-type: none"> <li>Express a normal desire for success and attention that is in balance with others having equal attention and success</li> <li>May experience disappointment when ignored or denied attention, take steps to moderate those feelings</li> </ul>	<ul style="list-style-type: none"> <li>A heightened desire for attention and fame</li> <li>Seek opportunities to draw attention to their efforts and find a larger purpose</li> <li>Able to moderate disappointment by trying harder</li> </ul>	<ul style="list-style-type: none"> <li>Driven to be the center of attention and acknowledged for their unique place in the world</li> <li>Frustrated at others when they are not able to achieve their goals or when others fail to acknowledge their special traits</li> </ul>	<ul style="list-style-type: none"> <li>Angered when others do not see the world from their viewpoint</li> <li>Self-worth is tied to having others acknowledge them</li> <li>Seek out others who support their views and share videos or writings to spread their views</li> </ul>	<ul style="list-style-type: none"> <li>Desire to be the chosen one with a sense of purpose that has alluded them</li> <li>Need to set wrongs right, unmasking injustices they have endured</li> <li>See violence as the best way to spread their message</li> </ul>
<b>FEELING</b>					
<b>6. Rage</b>	<ul style="list-style-type: none"> <li>Express a normal range of frustration around dating and romantic involvements</li> <li>Return to normal when the disappointment abates, or they find supportive ways to work through their anger</li> </ul>	<ul style="list-style-type: none"> <li>Flair ups related to perceived slights, injustices experienced, and difficult situations</li> <li>Often related towards women who are unwilling to date them or men who are seen as "less than worthy" to have the attention from attractive women</li> </ul>	<ul style="list-style-type: none"> <li>Upset when they see attractive women with men who are "less than" they see themselves</li> <li>Voice their frustration to others, complain and vent about their difficulty and are increasingly upset at the unfairness of the situation</li> </ul>	<ul style="list-style-type: none"> <li>Increasingly rageful at women, men and society who they see as continually blocking them from dating</li> <li>Increasingly angry and vent and share their indignation and wrath online and in groups that share their beliefs</li> </ul>	<ul style="list-style-type: none"> <li>Fly into a rage and act impulsively</li> <li>Feel justified in their actions because of the unfairness of their situation and the need for revenge</li> <li>Engage in threats and ultimatums towards others</li> </ul>
<b>7. Hopelessness</b>	<ul style="list-style-type: none"> <li>May have fleeting thoughts of the future not being better than their current situation</li> <li>Reasonable about their expectations</li> </ul>	<ul style="list-style-type: none"> <li>Sad about not having a better tomorrow</li> <li>Frustrated at the amount of effort they are putting into dating with little gain</li> </ul>	<ul style="list-style-type: none"> <li>Feel increasingly desperate and hopeless that things will ever be different</li> <li>Less willing try different approaches</li> </ul>	<ul style="list-style-type: none"> <li>Little to no success at pursuing women</li> <li>Reject alternative ideas and ways to try to approach women</li> <li>May adopt a blackpill philosophy</li> </ul>	<ul style="list-style-type: none"> <li>Experience a total futility and desperation at the idea they will ever be able to find a partner</li> <li>May begin to have suicidal or violent/vengeful thoughts</li> </ul>
<b>8. Catastrophe</b>	<ul style="list-style-type: none"> <li>Negative life events and difficulties with dating are seen as unfortunate and upsetting but temporary setbacks that are able to be overcome with a positive attitude and support of friends</li> </ul>	<ul style="list-style-type: none"> <li>Negative dating experiences are difficult to overcome and begin to be seen as deterministic for a more negative future</li> <li>Find a sense of hope again, but often over-emphasize negative experiences</li> </ul>	<ul style="list-style-type: none"> <li>Rejections are given a larger emphasis and directly lead to a spike in depression (lack of eating, sleeping, sadness, isolation) or anger (venting online, yelling, storming off)</li> </ul>	<ul style="list-style-type: none"> <li>Lack of success in dating has led to a reduction in a willingness approach women</li> <li>Prone to extreme emotions when faced with rejection</li> <li>Vilify those they desire through objectified language</li> </ul>	<ul style="list-style-type: none"> <li>Any new attempt socializing, are met with extreme behaviors</li> <li>Isolate and find others online who support their beliefs</li> <li>Frame attractive woman) or the obstacles in front of them (men) as worthless and evil</li> </ul>
<b>9. Disability</b>	<ul style="list-style-type: none"> <li>Able to overcome mental health issues with assistance from therapy, medication or other resiliency efforts</li> </ul>	<ul style="list-style-type: none"> <li>Mental or physical illness issues that make dating and social interactions more difficult</li> <li>Increased effort and support from others allows for limited success overcoming these limitations</li> </ul>	<ul style="list-style-type: none"> <li>Consistent challenges in meeting women and overcoming the social or physical limitations that prevent them from success</li> <li>May seek help or assistance from therapy, friends or family, but still have little success in achieving their desires</li> </ul>	<ul style="list-style-type: none"> <li>Difficulties related to their illness, even with support, make it almost impossible to reach their dating goals</li> <li>Increasingly isolated and depressed or angry with their situation and an uncaring society that has left them behind</li> </ul>	<ul style="list-style-type: none"> <li>There is no opportunity for success in dating the women they desire, even with intense effort and support from friends, counseling and family</li> <li>Despondent, hopeless and potentially suicidal or experience intense rage and anger</li> </ul>
<b>10. Abandoned</b>	<ul style="list-style-type: none"> <li>May experience sporadic feelings of being alone or misunderstood</li> <li>Connect with others to overcome these feelings and return to a sense of balance</li> </ul>	<ul style="list-style-type: none"> <li>An awareness they are often left behind, forgotten or neglected</li> <li>Return to a sense of balance through their own resiliency and/or with support from others such as friends, family, or a therapist</li> </ul>	<ul style="list-style-type: none"> <li>Increasingly anxious and worried things will not get better</li> <li>A relationship may have ended or a friend or family member moved away</li> <li>Worry they are not good enough to have people care about them</li> </ul>	<ul style="list-style-type: none"> <li>Feel alone and uncared for in their life</li> <li>Few friends and are resistant to the idea that people truly care for them</li> <li>Increasingly depressed and isolated</li> </ul>	<ul style="list-style-type: none"> <li>Pervasive sense of hopelessness and despair and believe no one cares about them</li> <li>Efforts to support them are met with suspicion</li> <li>May struggle with suicidal thoughts or violent fantasies</li> </ul>



## Incel Indoctrination Rubric (IIR): Scoring Guide

	NOT PRESENT (0 Points)	MINOR TRAITS (.25 Points)	MODERATE TRAITS (.50 Points)	MAJOR TRAITS (.75 Points)	FULLY PRESENT (1 Point)
<b>BEHAVIOR</b>					
<b>11. Approach Behaviors</b>	<ul style="list-style-type: none"> <li>No aggressive or threatening behavior</li> <li>Express feelings verbally and work through any difficulties</li> </ul>	<ul style="list-style-type: none"> <li>Frustrated at difficulties with dating but does not yell or gesture</li> <li>May argue or express dissatisfaction with women they want to date being out of their reach</li> </ul>	<ul style="list-style-type: none"> <li>Upset at others who are able to date successfully</li> <li>No direct yelling or throwing of objects, they become upset and huff, storm off, or otherwise communicate their frustrations</li> </ul>	<ul style="list-style-type: none"> <li>Impulsively display frustration, yelling and anger in attempts to flirt with or date women</li> <li>Fueled by adrenaline and frequently fly off the handle</li> <li>Increased anger at the futility of finding a woman</li> </ul>	<ul style="list-style-type: none"> <li>Enraged at women who reject them</li> <li>Engage in yelling, throwing objects and challenging</li> <li>A history of inappropriate and unwanted advances or touching of women or girls</li> </ul>
<b>12. Howling</b>	<ul style="list-style-type: none"> <li>No evidence of any threats or larger frustrations related to women, alpha males or societal influences that negatively impact their ability to date women</li> </ul>	<ul style="list-style-type: none"> <li>May be some social media posts or off-hand comments about frustrations related to dating or social connections to women</li> <li>No threats or intimidating comments to others</li> </ul>	<ul style="list-style-type: none"> <li>Occasional posts or comments that have a shaming or negative quality towards women, men, or society</li> <li>Comments are designed to insult but lack any threatening quality</li> </ul>	<ul style="list-style-type: none"> <li>Increased social media posts or interactions that display frustration and dissatisfaction</li> <li>Shame, intimidate, and frustrate those who they feel are responsible for their pain and difficulty finding a woman</li> </ul>	<ul style="list-style-type: none"> <li>Frequent expressions of frustration related to dating and incel concepts</li> <li>Transient threats, ultimatums and comments are made</li> <li>Share their views and beliefs</li> </ul>
<b>13. Suicide</b>	<ul style="list-style-type: none"> <li>No suicidal feelings or desire to kill themselves</li> <li>Difficulties experienced in finding a connection with women are resolved by support from friends, family or therapy</li> </ul>	<ul style="list-style-type: none"> <li>Increase in thoughts of depression and a worry that it will always be this way</li> <li>No suicidal intent</li> <li>Driven by frustrated attempts to connect with women</li> </ul>	<ul style="list-style-type: none"> <li>More bad than good days</li> <li>The depression pairs with a feeling of hopelessness in connecting with women</li> <li>No direct threats of suicide but may be increased thoughts considering suicide</li> </ul>	<ul style="list-style-type: none"> <li>Increasing thoughts of suicide related to failure with women</li> <li>Share thoughts of suicide, despair and hopelessness with others and online</li> <li>Attempts to support or help are rebuffed or unsuccessful</li> </ul>	<ul style="list-style-type: none"> <li>Intense feelings of suicide and threats of carrying it out (often as a murder/suicide)</li> <li>Intense frustrations related to thwarted connection to women</li> <li>Connect to others online who share similar beliefs</li> </ul>
<b>14. Past Attacks</b>	<ul style="list-style-type: none"> <li>Passive knowledge of past incel attacks but little commentary or opinions about them</li> </ul>	<ul style="list-style-type: none"> <li>Knowledge of past incel attacks, particularly those that occur out of anger at not dating</li> <li>No direct support for these attacks, but there may be mentions of context and extenuating circumstances</li> </ul>	<ul style="list-style-type: none"> <li>Increased mentions of past incel attacks</li> <li>Express empathy for the attackers</li> <li>Might not mention past attacks directly but show evidence of studying past tactics</li> </ul>	<ul style="list-style-type: none"> <li>Knowledge of and support for past incel attacks</li> <li>Willing to see the killing as a useful message for those who don't appreciate the full nature of the problems facing incels</li> </ul>	<ul style="list-style-type: none"> <li>Detailed knowledge of past incel attacks</li> <li>Refer to attacks often</li> <li>Speak positively about past incel killings and describe the attackers as heroes or martyrs</li> </ul>
<b>15. Redpill</b>	<ul style="list-style-type: none"> <li>Lack of knowledge about the redpill philosophy and no arguments or vocal encouragements for others to follow this philosophy</li> </ul>	<ul style="list-style-type: none"> <li>Some knowledge about redpill philosophy</li> <li>May have taken some tentative steps to improve in order to attract women</li> </ul>	<ul style="list-style-type: none"> <li>A deeper understanding of the redpill philosophy</li> <li>Efforts to follow the guiding principles of the concept</li> <li>Seek advice from discussion boards, incel websites and dating videos</li> </ul>	<ul style="list-style-type: none"> <li>Believe in the redpill approach and have a commitment to improving and being more successful in dating</li> <li>Share these ideas with others in conversation and online</li> </ul>	<ul style="list-style-type: none"> <li>An intense buy-into the redpill philosophy and engage in active steps to improve their dating prospects</li> <li>Argue with others to convince them of the value of this approach</li> </ul>
<b>ENVIRONMENT</b>					
<b>16. Incel Materials</b>	<ul style="list-style-type: none"> <li>Lack of knowledge or exposure to any incel literature or philosophy</li> </ul>	<ul style="list-style-type: none"> <li>Read a bit more incel material and may be open to the ideas but are still questioning and exploring</li> <li>Do not discuss these concepts online or with others regularly</li> </ul>	<ul style="list-style-type: none"> <li>Exploration of incel ideas</li> <li>A general sense of resonance and agreement with the ideas</li> <li>May talk tentatively with others about the concepts but are aware others would find these ideas insulting</li> </ul>	<ul style="list-style-type: none"> <li>A detailed understanding of incel ideas</li> <li>Connected to online discussion boards and website</li> <li>Adopt these concepts and challenge others who differ with their opinion</li> </ul>	<ul style="list-style-type: none"> <li>A deep and expansive knowledge of incel concepts and active engagement online</li> <li>Alternative viewpoints are routinely dismissed</li> <li>Heated debates and arguments with others</li> </ul>
<b>17. Rejection</b>	<ul style="list-style-type: none"> <li>Have not approached many women and/or have had the expected mixed success</li> <li>May have felt rejection, but had a healthy reaction</li> </ul>	<ul style="list-style-type: none"> <li>Minor attempts to flirt or have conversations with women, but there was no effort to approach woman or ask them out</li> </ul>	<ul style="list-style-type: none"> <li>Attempts to meet women were difficult and met with little success</li> <li>Felt a lack of interest from women</li> <li>Beginning to feel hopeless that this will change</li> </ul>	<ul style="list-style-type: none"> <li>Numerous times where attempts to form a connection or ask a woman out were unsuccessful</li> <li>Believe women aren't interested in them and they have no value or desirable traits</li> </ul>	<ul style="list-style-type: none"> <li>Pervasive and continual rejection from women</li> <li>Told directly it was because they were unattractive or lacked certain qualities</li> <li>Intense feelings of frustration, hopelessness and anger</li> </ul>
<b>18. Bullied</b>	<ul style="list-style-type: none"> <li>Have not experienced bullying behavior from others or have been teased</li> </ul>	<ul style="list-style-type: none"> <li>May have experienced some negative feedback and teasing about their appearance, dating skills and/or social worth</li> <li>Limited in terms of the impact on their self-esteem or hope for a better future</li> </ul>	<ul style="list-style-type: none"> <li>Experienced teasing often about their appearance and ability to attract women</li> <li>Bullying may be public and cause deeper feelings of embarrassment</li> </ul>	<ul style="list-style-type: none"> <li>Bullying happens both in person and online</li> <li>Feelings of depression, sadness and hopelessness</li> <li>May attempt to take solace in incel websites and discussion groups</li> </ul>	<ul style="list-style-type: none"> <li>Frequent bullying, teasing and a loss of face in front of others</li> <li>May perceive bullying when it is not present, feeling like everyone is making fun of them</li> <li>Intense feeling of worthlessness, sadness and anger</li> </ul>
<b>19. Failure to Change</b>	<ul style="list-style-type: none"> <li>Either no attempt to change behavior or attempts to change have been successful</li> </ul>	<ul style="list-style-type: none"> <li>Desire to attempt to improve communication skills, reduce anxiety and find ways to better approach women</li> <li>Not yet had a chance to try these techniques out very often but are hopeful</li> </ul>	<ul style="list-style-type: none"> <li>Efforts to improve dating or sexual outcomes have been made and met with difficulty and failure</li> <li>There is will a slight willingness at trying again</li> </ul>	<ul style="list-style-type: none"> <li>A continual negative outcome when they attempt to change how they approach women</li> <li>Glimmer of hope things could be different, but feelings of worthlessness and exacerbation</li> <li>Seek out online support</li> </ul>	<ul style="list-style-type: none"> <li>Meet failure at every turn</li> <li>Convinced this is their lot in life and are unwilling to try to change again in the future</li> <li>Vindictive and angry at those they see as responsible for their plight</li> </ul>
<b>20. Free Fall</b>	<ul style="list-style-type: none"> <li>An overall positive outlook on their life and supports, such as friends and parents, are in place and sufficient</li> </ul>	<ul style="list-style-type: none"> <li>Difficulties or loss experienced by the individual that cause them to struggle to stay positive</li> <li>Connect with friends and family but feel increasing out of step with them</li> </ul>	<ul style="list-style-type: none"> <li>Loss and personal problems are increasingly common</li> <li>Ignored by, or meet difficulty and judgment from, friends and family</li> </ul>	<ul style="list-style-type: none"> <li>Familiar with the incel world</li> <li>Women remain far out of reach and even the faint hope that they would be successful in with them is increasingly unlikely</li> <li>Seek social connection online</li> </ul>	<ul style="list-style-type: none"> <li>A public event or major life change exacerbates the situation</li> <li>Little stability in their lives and no hope of dating</li> <li>Participate online and reinforce their negative self-view</li> </ul>



## Incel Indoctrination Rubric (IIR): Scoring Sheet

The Incel Indoctrination Rubric (IIR) is a research based, objective guide to assessing the depth of an incel's beliefs and commitment to the movement. The IIR is comprised of twenty risk factors, divided into four categories: Thinking, Feeling, Behavior, and Environment. Together, these items measure an individual's level of indoctrination and depth of involvement in the movement. Each item is given a score of 0, .25, .5, .75 or 1, for a total score between 0 and 20. Using the IIR Scoring Guide as a reference, record the score for each item and the rationale behind it in the table below.

	Score	Thinking
1. Misogyny		
2. Racism		
3. Blackpill		
4. Inaccurate Self-Conception		
5. Fame Seeking		
	Score	Feeling
6. Rage		
7. Hopelessness		
8. Catastrophe		
9. Disability		
10. Abandoned		

## Incel Indoctrination Rubric (IIR): Scoring Sheet

	Score	Behaviors
11. Approach Behaviors		
12. Howling		
13. Suicide		
14. Past Attacks		
15. Redpill		
	Score	Environment
16. Incel Materials		
17. Rejection		
18. Bullied		
19. Failure to Change		
20. Free Fall		

Thinking					Feeling					Behaviors					Environment				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
																		0.00	

## Understanding and Treating Incels

Case Studies, Guidance, and Treatment of Violence Risk in the Involuntary Celibate Community

Brian Van Brunt and Chris Taylor



November 2020: 6 x 9: 312pp  
11 illustrations

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Appendix

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## Understanding and Treating Incels

Case Studies, Guidance, and Treatment of Violence Risk in the Involuntary Celibate Community

**Brian Van Brunt**, TNG NCHERM Group, LLC, New Hampshire, USA and **Chris Taylor**, Wright State University, Ohio, USA

*Understanding and Treating Incels* is an indispensable guide for mental health clinical staff, social workers, prevention specialists, educators, and threat assessment professionals who want to better understand the involuntary celibate movement, assess individuals' potential for violence, and offer treatment approaches and prevention efforts.

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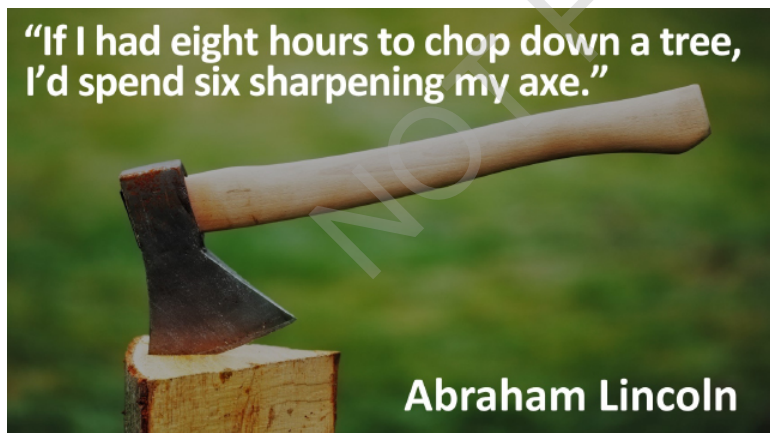
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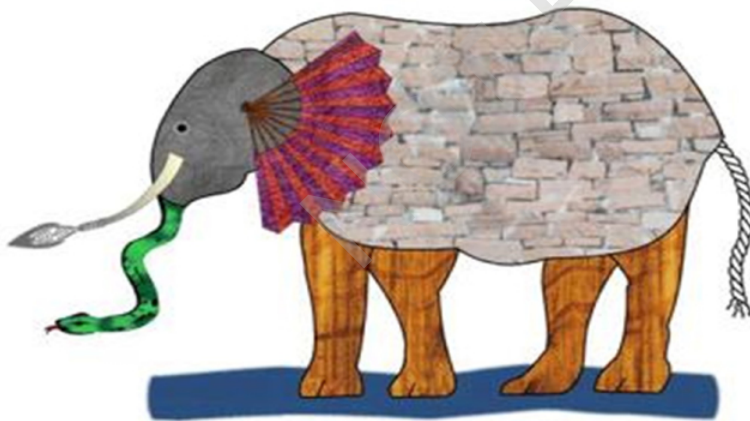
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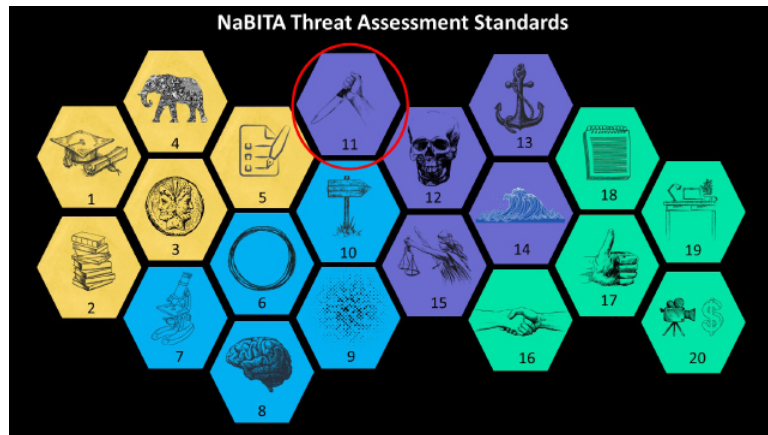


**NaBITA Risk Tools**

- Risk Rubric
- Violence Risk Assessment of the Written Word (VRAW<sup>2</sup>)
- Looking Glass
- Structured Interview for Violence Risk Assessment (SIVRA-35)
- Extremist Risk Intervention Scale (ERIS)
- Incel Indoctrination Rubric (IIR)
- Non-clinical Assessment of Suicide (NAS)







Two types of violence:

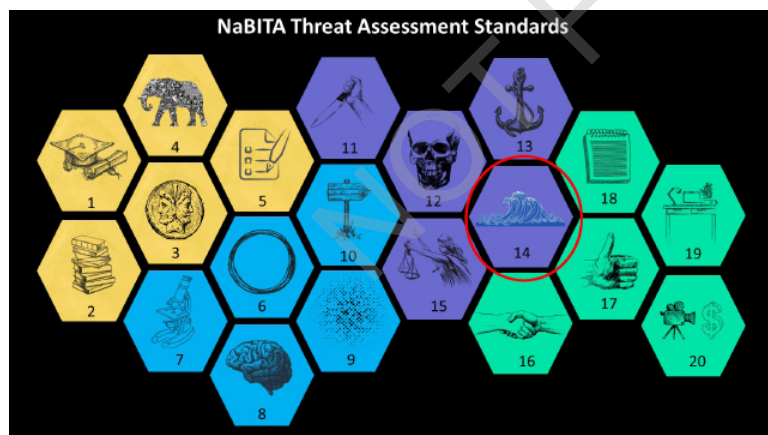
**Affective**  
**Predatory**



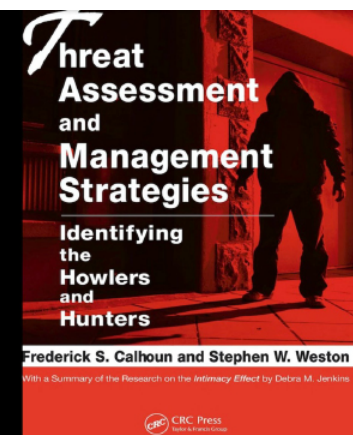
**TARGETED VIOLENCE**

STRATEGIC  
INTENT-DRIVEN  
PLANNED AND PRE-MEDITATED  
MISSION-ORIENTED

A photograph of a person in a dark, outdoor setting, possibly at night, illustrating the concept of targeted violence.



**Hunters & Howlers**



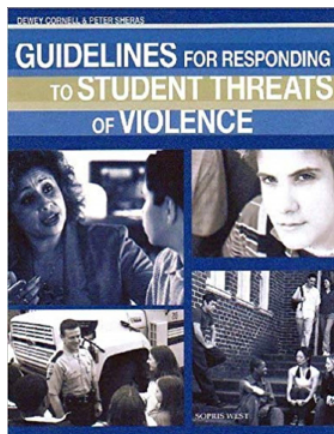
Calhoun and Weston wrote a seminal book,  
*Hunters and Howlers*.



The central premise is those who are planning at true attack rarely communicate this prior to attacking.

Standard 17

**“Writing letters is easy; shooting someone or setting him on fire presents a considerably more difficult challenge”**



## Transient & Substantive Threats

Cornell & Sheras wrote *Guidelines on Responding to Student threats of violence*.

They discuss that **transient threats** do not express a lasting intent to harm and **substantive threats** as a continuing attempt to harm someone beyond the initial incident.

Standard 17



# Quiz!



**An angry student says.  
“I’m going to kill her for  
breaking up with me!”**

**On interview the student says  
he has no plans to harm his ex,  
that he just lost his temper.  
He apologizes.**

- A. No threat**
- B. Transient threat**
- C. Substantive threat**

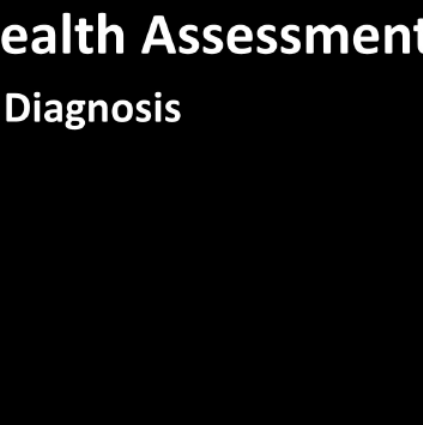
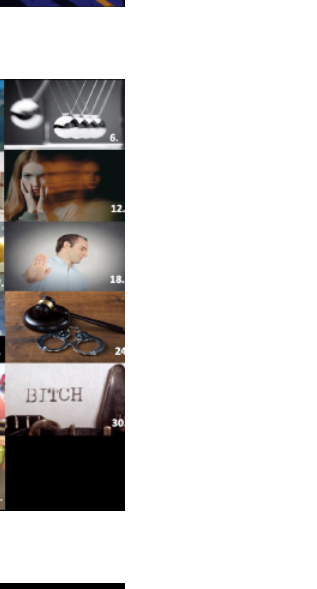
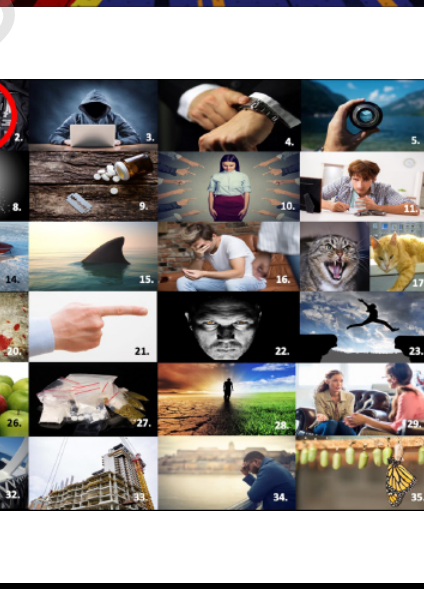
**A student is found with a  
list of of student’s names  
under the heading of  
“scheduled to die.”**

**On interview, the student is  
uncooperative and says that  
what he does after school is  
his business . And besides,  
they deserve it for what they  
did to him.**

- A. No threat**
- B. Transient threat**
- C. Substantive threat**

**A student calls in a bomb threat.**

- A. No threat**
- B. Transient threat**
- C. Substantive threat**



## Mental Health Assessment



Diagnosis

Inpatient Assessment

Standard 17

## Mental Health Assessment



Diagnosis

Inpatient Assessment

Medication Referral

Standard 17

## Mental Health Assessment



Diagnosis

Inpatient Assessment

Medication Referral

Treatment Planning

Standard 17

## Mental Health Assessment



Diagnosis

Inpatient Assessment

Medication Referral

Treatment Planning

Community Referral

Standard 17

## Violence Risk Assessment



Standard 17

## Violence Risk Assessment



Gather Background

Standard 17



# Violence Risk Assessment


Gather Background  
Assess Risk Factors



Standard 17

# Violence Risk Assessment

Gather Background  
Assess Risk Factors  
Transient/Substantive



Standard 17

# Violence Risk Assessment

Gather Background  
Assess Risk Factors  
Transient/Substantive  
Assess Protective Factors



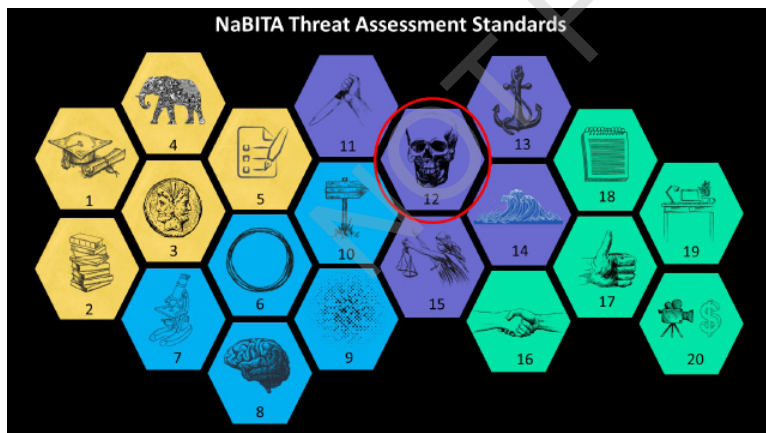
Standard 17

# Violence Risk Assessment

Gather Background  
Assess Risk Factors  
Transient/Substantive  
Assess Protective Factors  
Violence Risk Estimate



Standard 17

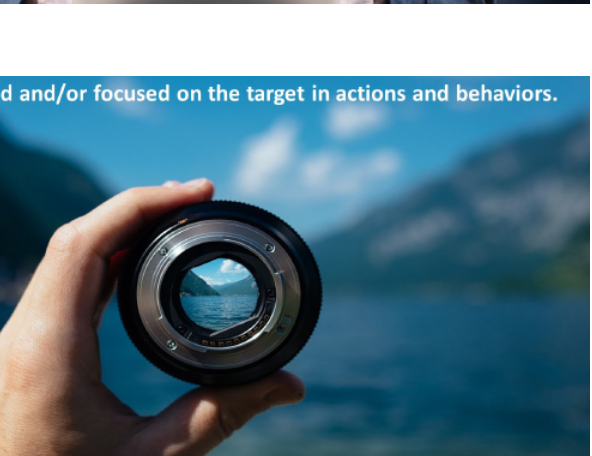




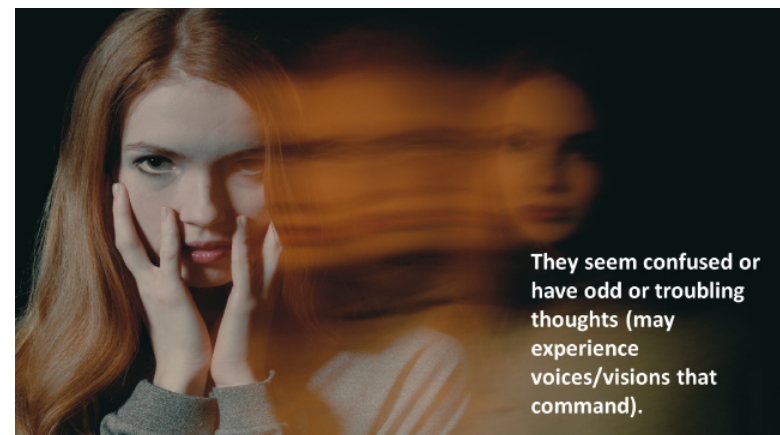
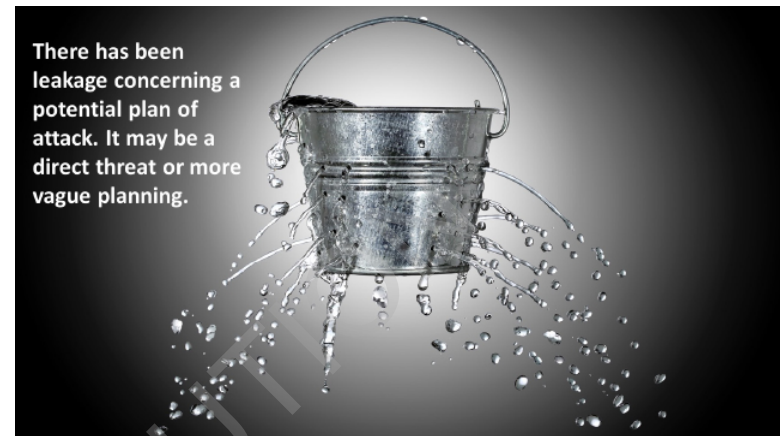
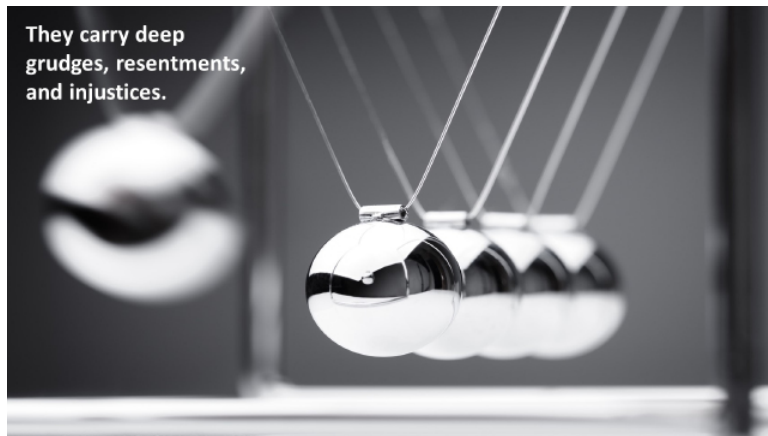
They are fixated and/or focused on the target in actions and behaviors.



d and/or focused on the target in actions and behaviors.







# Warning Behaviors

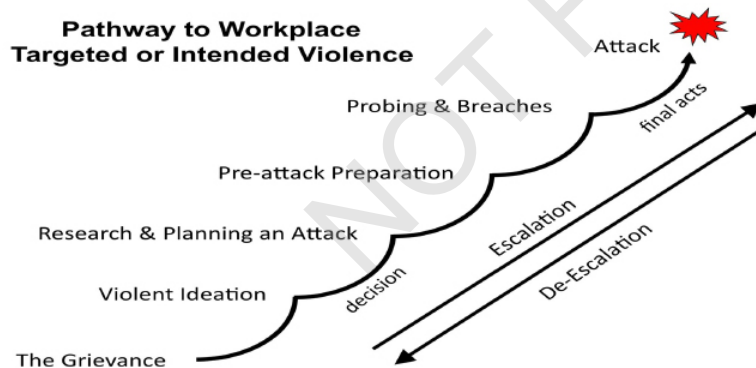


For assessing threats of intended violence

Evidence of  
increasing or  
accelerating risk

Acute, dynamic, and  
particularly toxic  
changes in behavior

1.  
Pathway **Warning**  
Behavior



Adapted with permission from F.S. Calhoun and S.W. Weston (2003). *Contemporary threat management: A practical guide for identifying, assessing and managing individuals of violent intent*. © 2003 F.S. Calhoun and S.W. Weston. All rights reserved.

2.  
Fixation **Warning**  
Behavior





### 3. Identification **Warning** Behavior



### 4. Novel Aggression **Warning** Behavior



5.

## Energy Burst **Warning** Behavior



## Acceleration of Behavior



6.

## Leakage **Warning** Behavior



7.

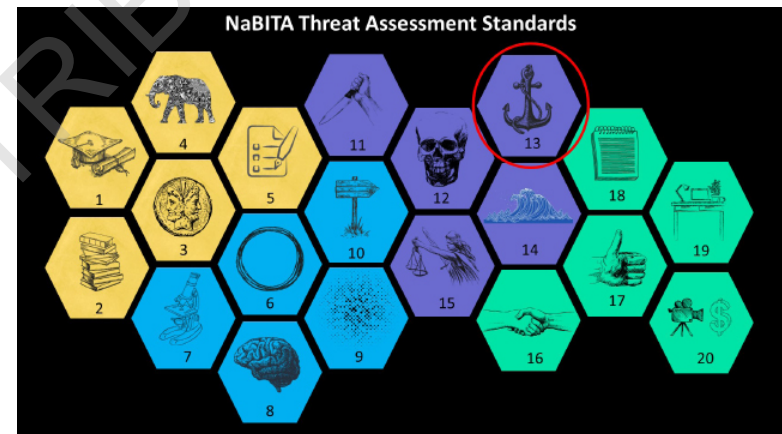
## Last Resort **Warning** Behavior





8.

## Directly Communicated Threat **Warning** Behavior

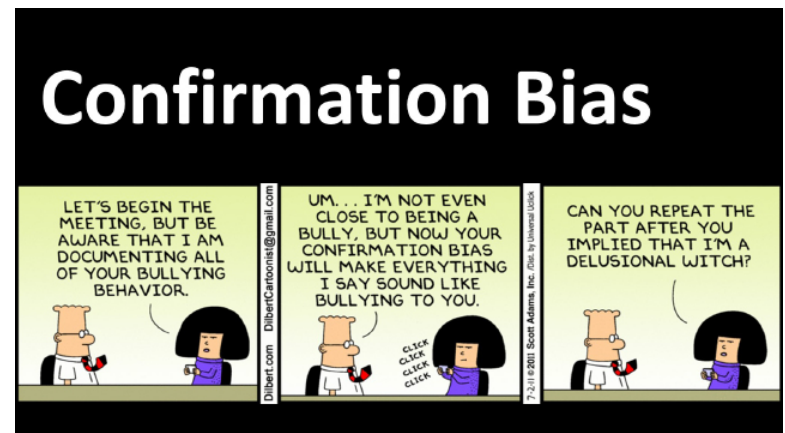
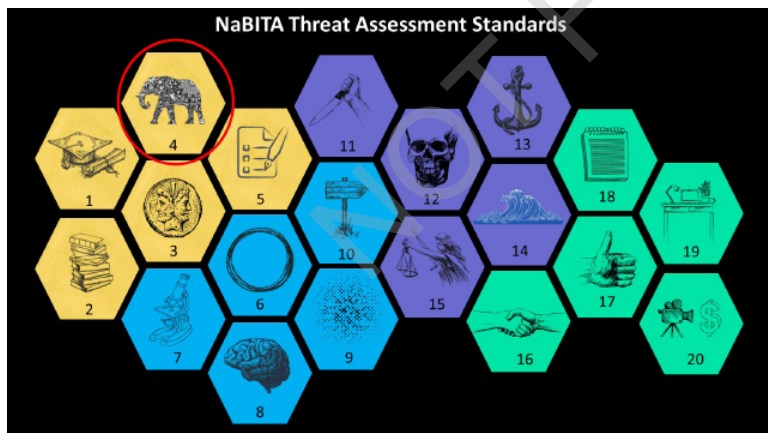


## Emotional Protective Factors/ Anchors



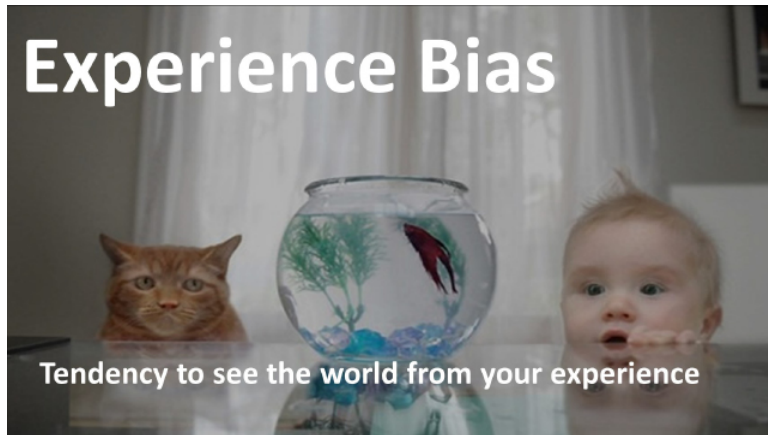
## Social Connection







## Experience Bias



## Responsibility Bias

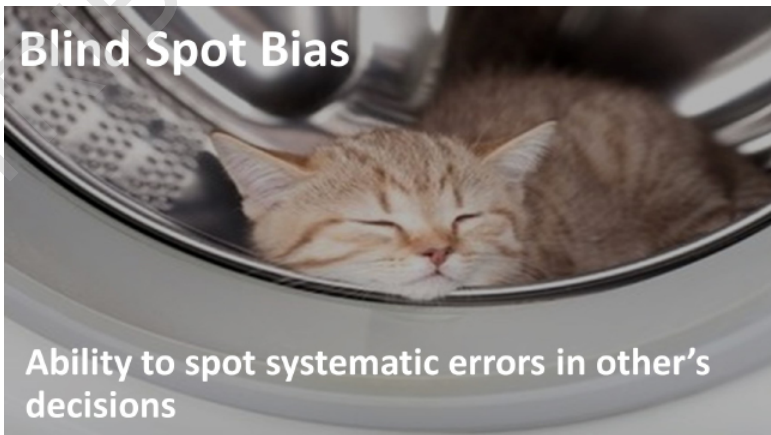
Tendency to assume people should be responsible for themselves



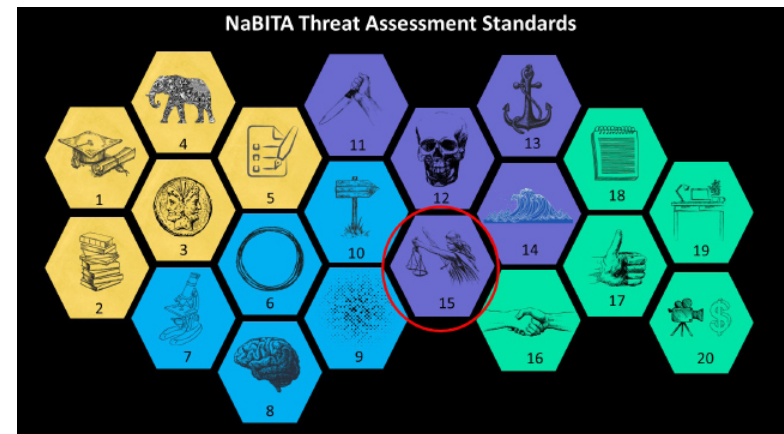
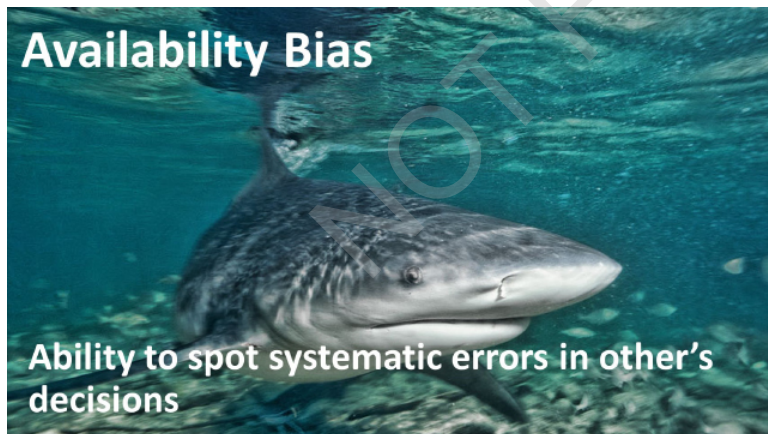
## In Group/Out Group Bias



## Blind Spot Bias



## Availability Bias

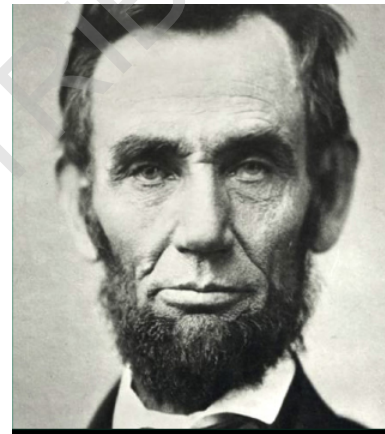
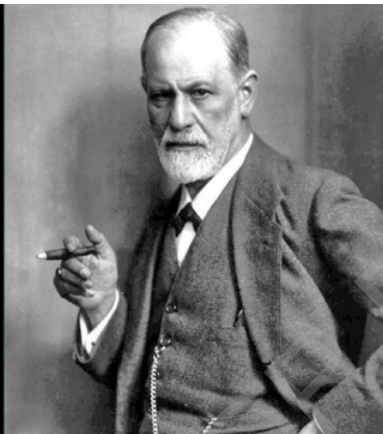


# Assessing Truthfulness



**"No mortal can keep a secret. If his lips are silent, he chatters with his finger-tips; betrayal oozes out of him at every pore."**

**-Freud**



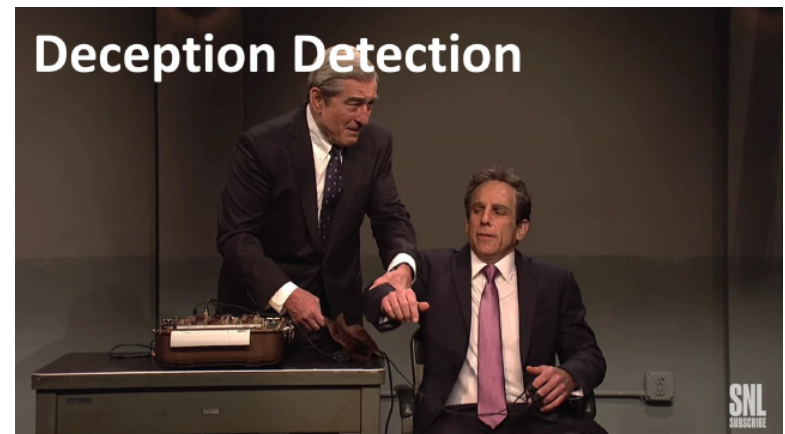
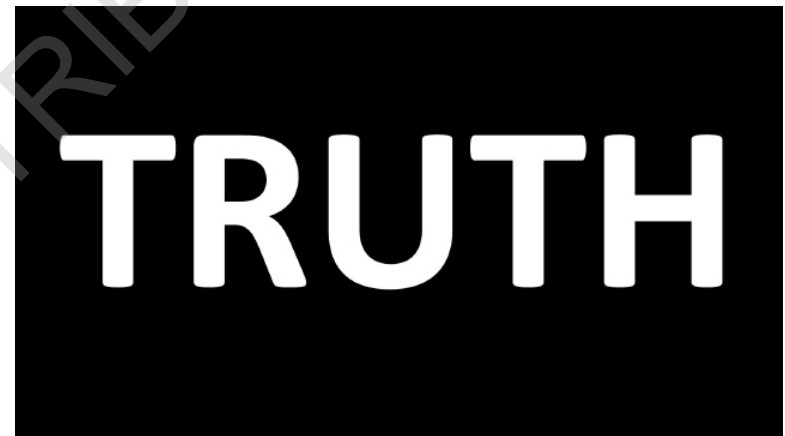
**"No man has a good enough memory to be a successful liar."**

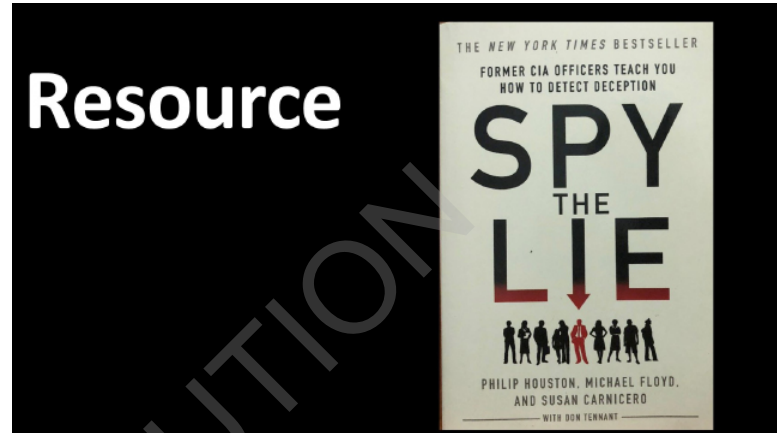
**-Abraham Lincoln**

**Liar, Liar...**

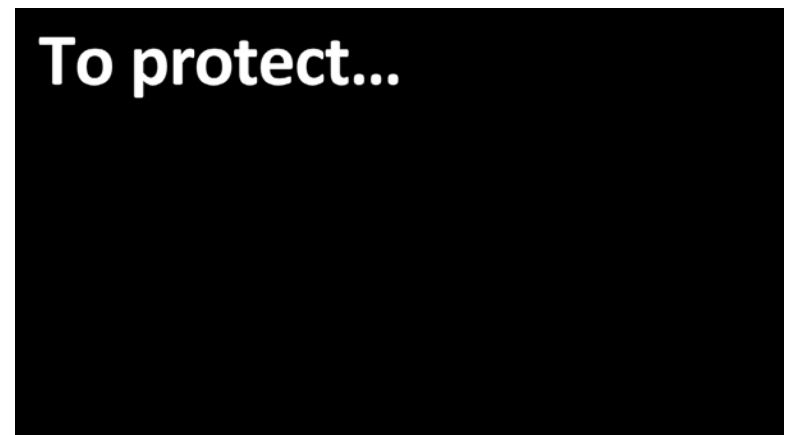












To protect...

**Ourselves**



To protect...

Ourselves  
**Our Interests**



To protect...

Ourselves  
Our Interests  
**Our Image**



To protect...

Ourselves  
Our Interests  
Our Image  
**Our Resources**



To protect...

Ourselves  
Our interests  
Our Image  
Our Resources  
**Others**



NaBITA Threat Assessment Standards





**“Writings, drawings, and other forms of individual expression reflecting violent fantasy and causing a faculty member to be fearful or concerned about safety, should be evaluated contextually for any potential threat”**

(O'Neill, Fox, Depue and Englander, 2008, 31)

