



**Legal Assistance
for Crime Victims**
An OVC Capacity Building Initiative

Legal Representation for Victims of Campus Sexual Assault

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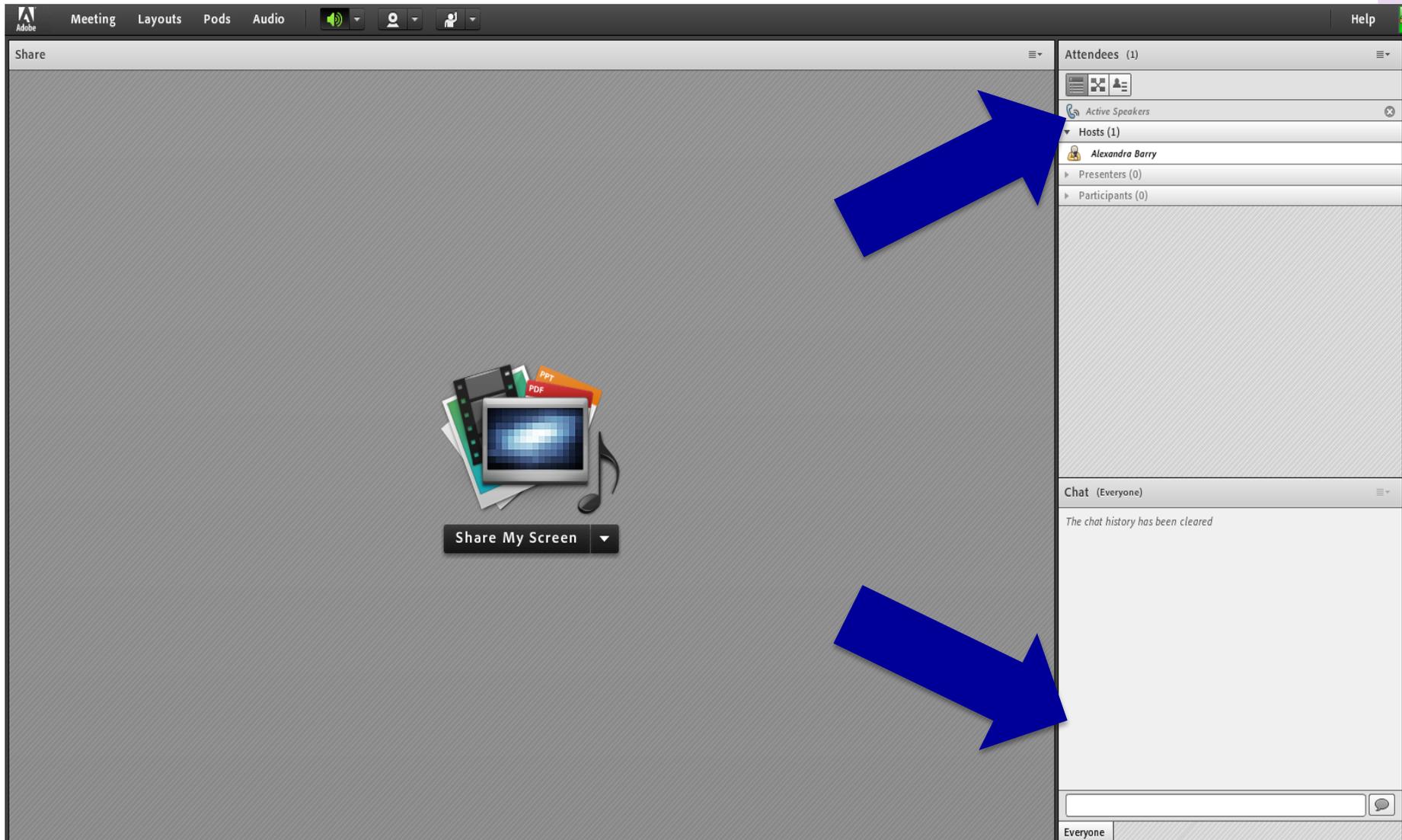
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Who is the VRLC?

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Training Overview

Survivors of Campus Sexual Assault

- **Understanding the population**

Title IX Basics

Legal Representation in Education Matters

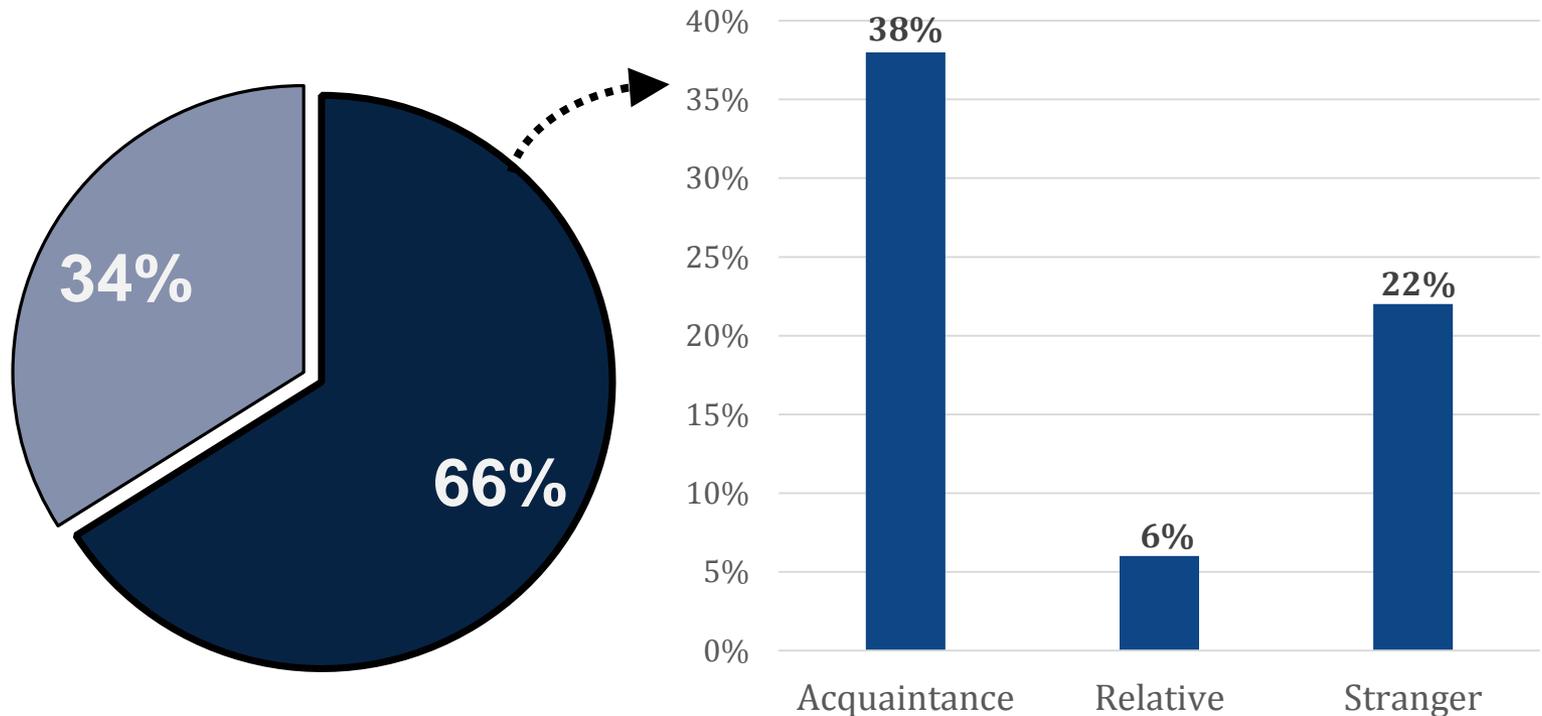
- **Negotiate with the institution**
- **Participate in the disciplinary process**
- **Assess and file an OCR complaint**

Getting to Know the Language

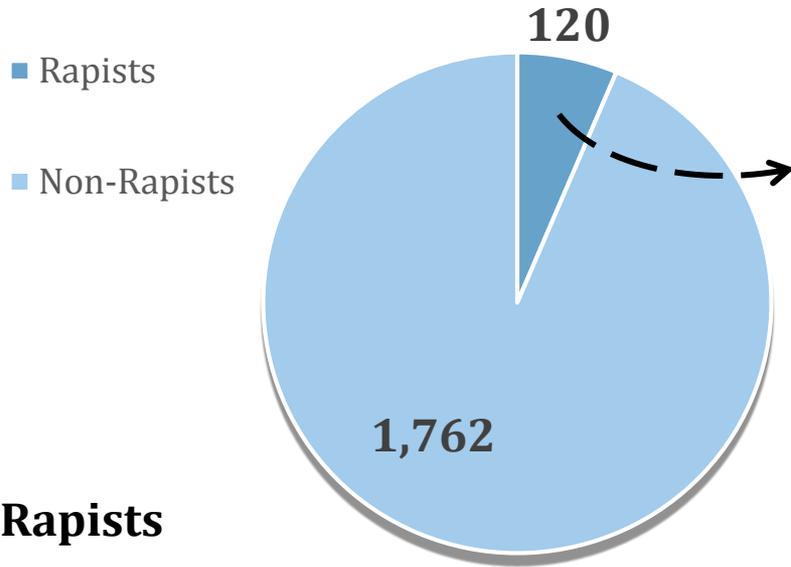
- **Perpetrator/Assailant and Victim/Survivor**
- **Accused and Accuser**
- **Respondent and Complainant**

DOJ Special Report

From 2005-2010, incidents of rape and/or sexual assault against female victims age 12 and older were perpetrated by the following:



Dr. David Lisak's Research



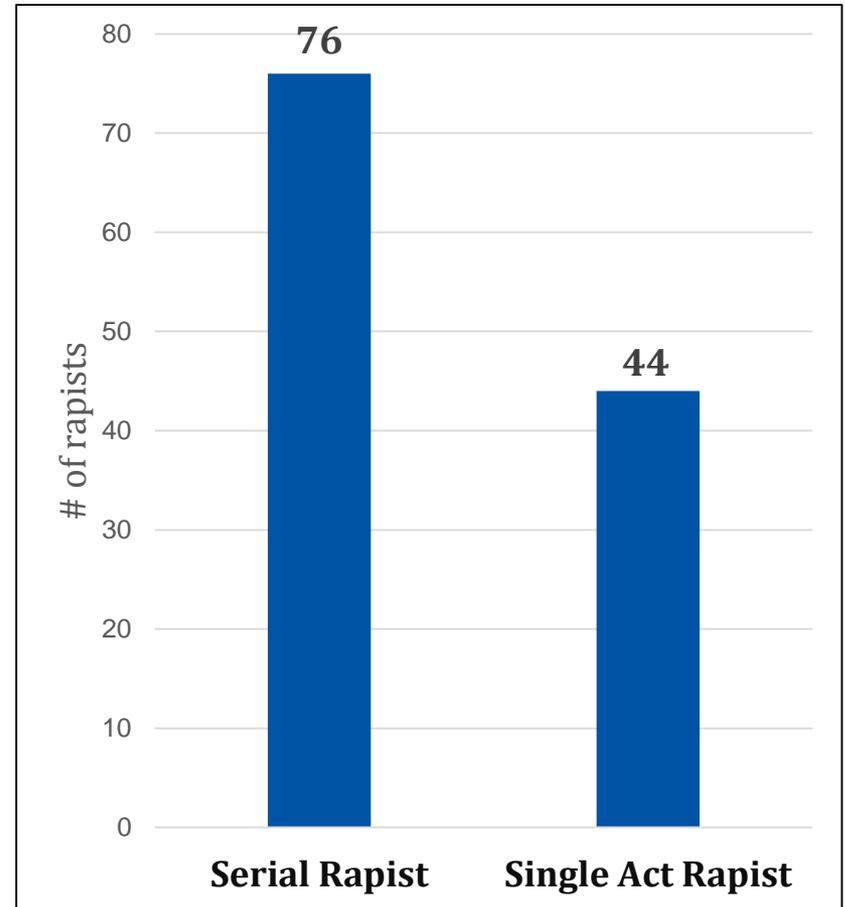
- **120 Rapists**

- **63% had committed more than one rape**

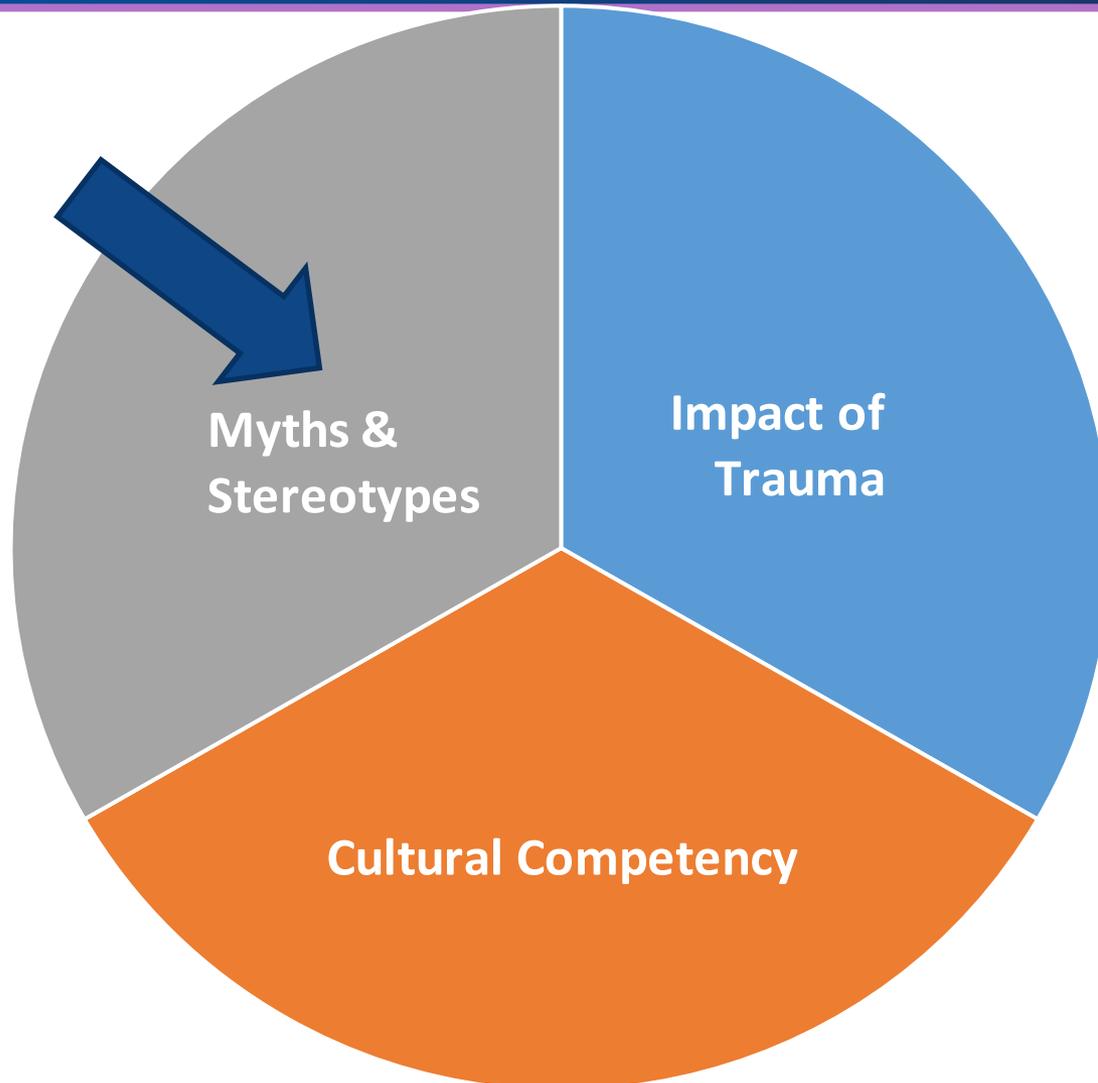
- **483 rapes and attempted rapes**

- **Serial Rapist: 439 rapes and attempted rapes**
- **Single Act Rapist: 44 rapes and attempted rapes**

- **Average of 4 rapes per rapist**



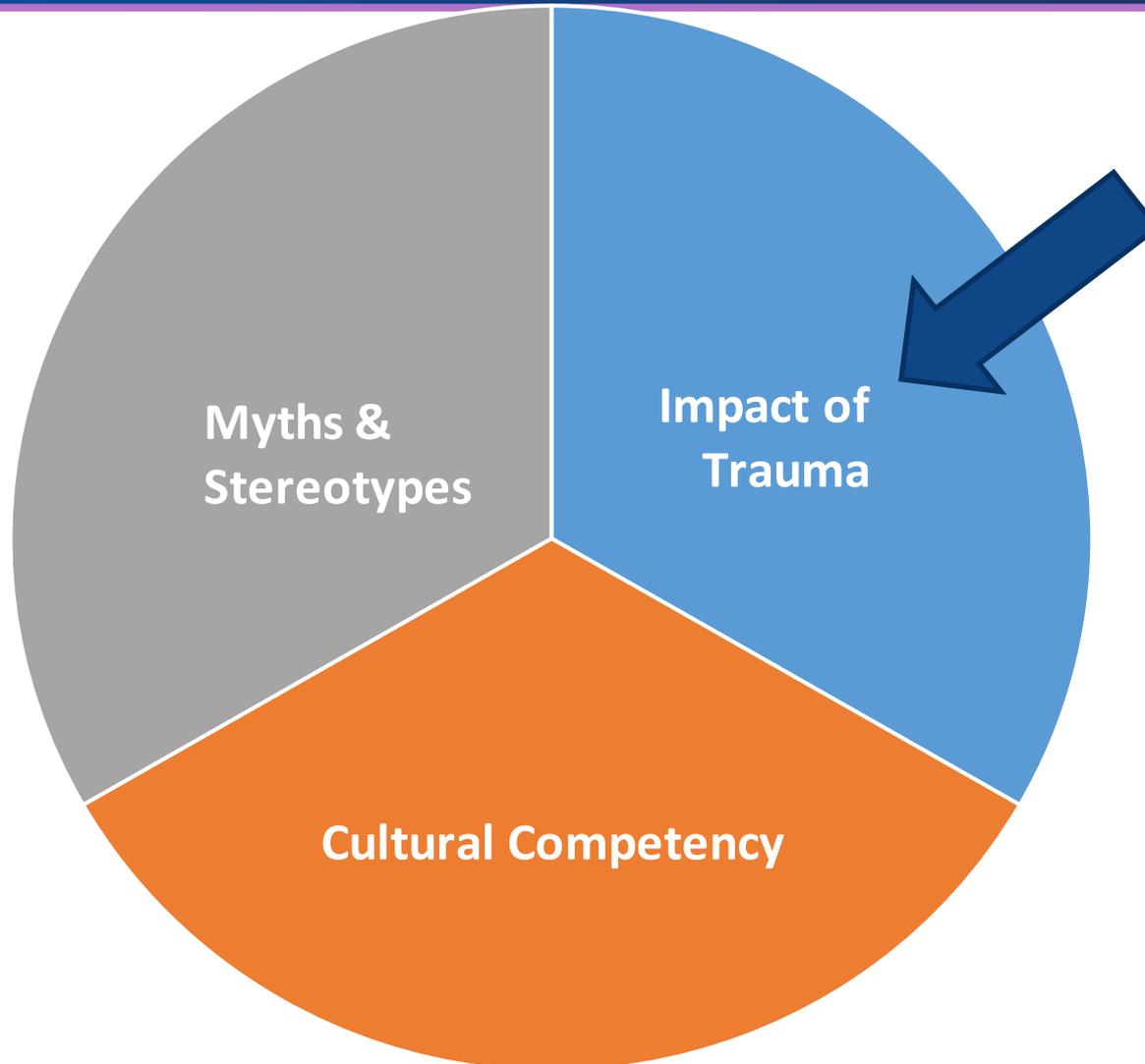
Practical Implications of “Trauma-Informed”



Myths and Stereotypes

- 1. Victim bears responsibility**
- 2. False allegation rates are high**
- 3. Rape is a misunderstanding**
- 4. Incapacitation can't mean the victim is physically functioning**
- 5. This is a law enforcement issue**

Practical Implications of “Trauma-Informed”



Assault Responses

Fight

Flight

Freeze

The Impact of Trauma

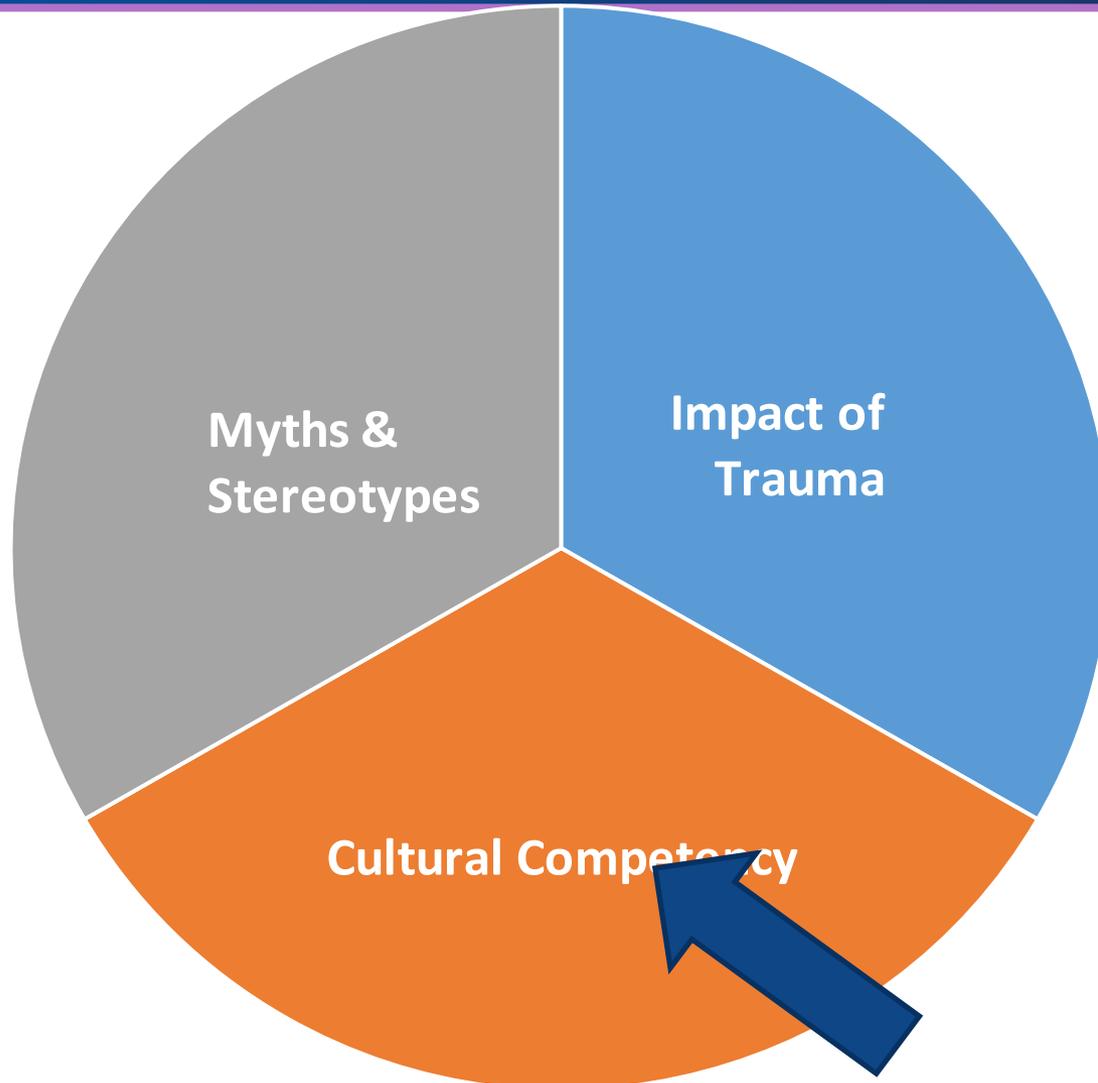
Can't remember details of the incident

Only remember certain details vividly

Experience triggers

Trouble with chronology

Practical Implications of “Trauma-Informed”



About Title IX

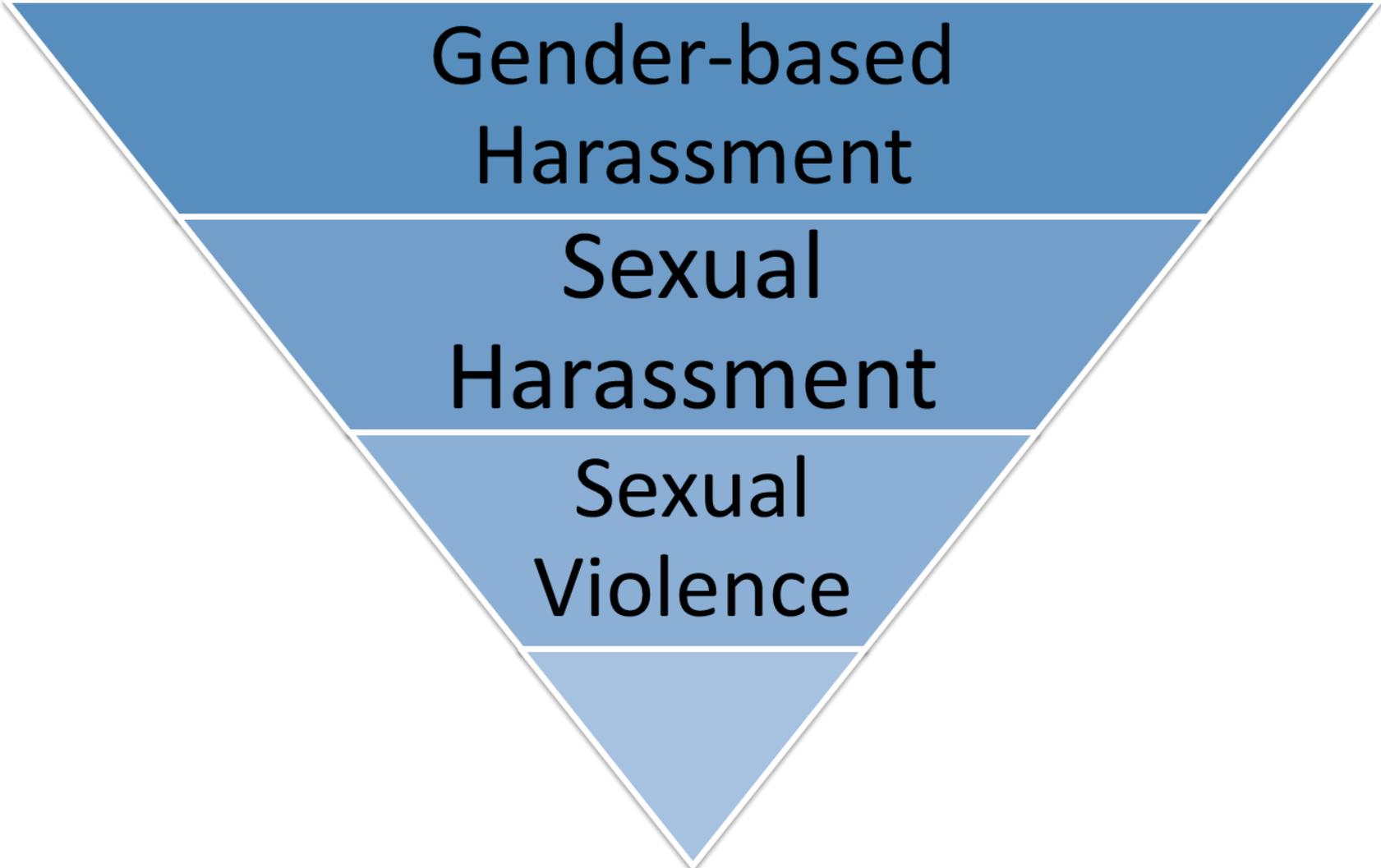
Who is required to comply with Title IX?

- All public and private educational institutions that receive federal funds

What does Title IX say?

- Prohibits recipients from discriminating on the basis of sex in education programs or activities. *Sexual harassment of students, which includes sexual violence, is a form of sex discrimination prohibited by Title IX.*

Harassment Covered



Gender-based
Harassment

Sexual
Harassment

Sexual
Violence

Title IX Protection

How does Title IX protect students?

- **Protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the institution**
 - **“Of or related to the institution”**
- **Also protects students who may have been sexually harassed off school grounds, outside an institution’s education program or activity, if the harasser was a fellow student**

Upon “Notice”

**An institution “must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.”
(DCL, 4)**

- **Inquiry must be prompt, thorough, and impartial**

Confidentiality and its Limits

Responsible Employees

Persons with Statutory
Privilege

Persons with
Confidentiality

Providing Legal Services

- **Negotiate with the institution**
- **Provide legal advocacy and support throughout the disciplinary process**
- **Assess and file an Office for Civil Rights complaint**

Privacy Considerations



Negotiate With the Institution

Step 1: Discuss with the survivor what services are desired or what assistance she/he needs

Step 2: With the help of the survivor, identify individuals on campus who are in a position to provide those services and assistance

Step 3: Contact institution to determine willingness to work with the survivor

Step 4: Make requests for services or assistance in writing

Services and Assistance on Campus

- **Safety measures**
- **No contact order**
- **Housing changes**
- **Academic assistance**

Practical Tip: Be Creative! Title IX provides a floor, not a ceiling. The facts and circumstances surrounding each case are different. Survivors are in the best position to tell you and the institution what will make them feel safe.

During Disciplinary Process: Help With Drafting Statement

- Focus the statement on the details of the incident(s)
- Don't let the survivor “cross-examine” her/himself
- Be upfront about “bad facts”
- Lay out the facts that show policy violation

Practical Tip: A disciplinary process can be emotionally taxing on survivors. Survivors have a choice as to whether they pursue the disciplinary process. Helping a survivor weigh the potential impact of the process on her/ his academic, social, and extracurricular life against her/his personal goals can assist a survivor in making a decision that is best for her/him.

During Disciplinary Process: Help Prepare for Interview/Hearing

- **Let survivor know about her/his rights**
 - Adequate, reliable, impartial investigation of complaint (DCL, 9)
 - Process facilitated by trained individual(s) (DCL, 12)
 - “Advisor of your choice” (VAWA Amendments § 668.46(k)(2)(iii) and (iv))
 - Equal and timely access to any information as the accused (VAWA Amendments § 668.46(k)(2)(v))
 - Equal opportunity to present relevant witnesses and evidence (Q&A, 12; DCL, 11)
 - Strong discouragement of the accused directly questioning (Q&A 31; DCL, 12)
 - Documented proceeding (DCL, 12)
- **Go over what the survivor should/should not focus on and the key points**

During Disciplinary Process: Provide Support Post-Interview/Hearing

- **Let survivor know of her/his right to receive written simultaneous notification of the results and any available appeal procedures (VAWA Amendments to the Clery Act § 668.46(k)(2)(v))**
 - **Including: the decision (responsible/not), sanction, and rationale**
- **If there is an appeals process, set the survivor's expectations and discuss it with her/him.**

Assessment

- **Does the institution receive federal funds?**
- **Was the last act of discrimination less than 180 days ago?**
- **Does this type of discrimination fall within Title IX?**
 - **Bullying vs. sexual harassment**

Strategic Considerations

Is this right for the survivor?

- **There is a breakdown in communication or trust between the survivor and the institution**
- **Survivor is seeking institutional or systemic change**
- **Survivor understands that the complaint is not likely to result in immediate change and the process is lengthy**

Drafting a Complaint

Limit the description of facts regarding the incident(s)

- **Helps to avoid inconsistencies if the survivor has an ongoing criminal process or decides to report to law enforcement at a later date**
- **Privacy purposes – Typically not necessary for the complaint, so no reason to share the details**

Drafting a Complaint

- **Include brief background/procedural history**
- **Keep the focus on the institution's actions and how those actions failed to comply with Title IX**
- **Highlight the most significant issues**
- **Conclude with remedies being sought**
- **Attach relevant materials as exhibits**
- **Request a meeting with attorney and investigator**

Filing a Complaint

- 1. Contact your regional office**
- 2. Submit written complaint**
- 3. Submit consent form**
 - Freedom of Information Act**
 - Advise survivor that her/his name will be released to the institution**

Post Filing a Complaint

No action

- An investigation is not opened

If OCR opens an investigation:

- OCR will contact the complainant and the institution
- Interview/meet with the complainant
- “Data requests”
- Resolution letter depending on investigation and findings

In Conclusion

- **Negotiate with the college or university**
- **Provide advocacy and support throughout the disciplinary process**
- **File an Office for Civil Rights complaint**

Resources

January 2001, Office for Civil Rights Guidance, available at:
<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

April 2011, Dear Colleague letter, available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

April 2014, Questions and Answers on Title IX and Sexual Violence, available at:
<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

October 2014, VAWA Amendments, available at:
<https://www.federalregister.gov/articles/2014/10/20/2014-24284/violence-against-women-act>

April 2015, Dear Colleague Letter: Title IX Coordinators, available at:
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

April 2015, Title IX Resource Guide, available at: <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>

Nancy Chi Cantalupo, *Campus Violence: Understanding the Extraordinary Through the Ordinary*, 35 J.C. & U.L. 613-690 (2009).

Nancy Chi Cantalupo, *Burying Our Heads in the Sand: Lack of Knowledge, Knowledge Avoidance, and the Persistent Problem of Campus Peer Sexual Assault*, 43 Loy. U. Chi. L.J. 205 (2011).

Information & Evaluation



Through OVC's Legal Assistance for Crime Victims Training and Technical Assistance Initiative, OVC's Training and Technical Assistance Center (OVC TTAC) is working to develop and deliver training and provide technical assistance to the legal community. Training and technical assistance provides attorneys across the country with the tools they need to increase their knowledge base about crime victim issues and increase their capacity to provide pro bono or no-cost legal representation to crime victims.

Visit the [Legal Assistance for Crime Victims Initiative](#) page to learn more about upcoming and archived trainings, or e-mail us at legalassistance@ovcttac.org for technical assistance and support.

Thank you for attending this webinar. Please take a few minutes to complete the [evaluation](#).