

The image features a light blue background. On the left side, there is a photograph of the United States Capitol building. In the foreground of this photograph, the black silhouettes of a woman and a man are visible, standing with their backs to the camera and looking towards the building. The woman is on the left, and the man is on the right. The Capitol building's dome and classical architecture are clearly visible.

Title IX's New Regulations

Implications for Campus Safety



Title IX's New Regulations

Implications for Campus Safety

34 CFR Part 106

**Nondiscrimination on the Basis of Sex in Education Programs
or Activities Receiving Federal Financial Assistance**

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Final rule.

EFFECTIVE DATE: August 14, 2020

The image features a background on the left side showing the silhouette of a woman and a man standing in front of the United States Capitol building. The woman is on the left, wearing a dark dress, and the man is on the right, wearing a dark suit. The Capitol building is visible in the background with its iconic dome and columns. The right side of the image is a white area containing text.

Guidance vs Regulations

- **Prior to August 14, 2020, the last time the OCR of DOE passed Title IX regulations was 1997. (Ronald Reagan Administration)**
- **Guidance is recommendations for policy and practice. They are not mandatory and do not carry the weight of law.**
- **Regulations carry the weight of law. However there is a process to make guidance regulations.**
 - **Over 124,000 public comments (1 ½ years)**

Terms and Definitions

Complainant: A person who alleges that she/he has been the subject of behavior that violates the University Sexual Misconduct Policy and wishes to report the allegations to a Title IX Coordinator.

Respondent: A person who is alleged to have violated the University Sexual Misconduct policy.

Note: *A person may be a complainant, or a respondent, even where no formal complaint has been filed and no grievance process is pending. (p. 19 of 2033 pages)*

Terms and Definitions

Recipient: A postsecondary educational institution that receives Federal financial assistance.

Decision-Maker: A member of the Administrative Hearing Panel or an Appeal Officer.

Supportive Measures: Services designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party and without constituting punitive or disciplinary actions including by protecting the safety of all parties and the recipient's educational environment or deterring sexual harassment.

Terms and Definitions

Remedies: When a respondent is found to be responsible for sexual harassment, the recipient must effectively implement remedies for the complainant, designed to restore or preserve the complainant's equal educational access, and may impose disciplinary sanctions [punitive] on the respondent.

Redesign of the Process



- Notice to TIX C
- Strategy Development

- Jurisdiction?
- Policy violation?
- Non-formal, administrative, resolution?

- Notice
- Identification of witnesses
- Interview scheduling
- Evidence collection
- Evidence & Inv. Report Shared
- Inv. report finalized

- Determination
- Sanction(s)

- Standing?
- Deny?
- Uphold?
 - Vacate?
 - Remand?
 - Substitute?

Supportive Measures and Remedies

Supportive Measures

Available to both complainant and respondent
Cannot be punitive or restrictive

Incident

Initial
Assessment

Formal
Investigation

Live
Hearing

Appeal

Case Is Closed

For complainant upon
respondent
Can be punitive or
restrictive

Remedies

Examples of Supporting Measures and Remedies

Supporting Measures

- **Counseling**
- **Resident Hall Relocation (voluntary)**
- **Escort Service (to and from vehicle)**
- **Academic Assistance (test taking, tutoring)**

Remedies

- **Resident Hall Relocation (party required)**
- **No contact order**
- **Academic Class Relocation/Withdrawal**
- **Suspension/Expulsion**
- **Facility Ban**

THE ADMINISTRATIVE HEARING PANEL (AHP)



The hearing will occur following an investigation by University sanctioned investigator(s). The hearing panel will consist of **three (3) Administrative Hearing Officers (AHO)**, one of which will be the Chair of the panel as outlined below.

<u>Respondent</u>	<u>Chair</u>	<u>CUW Member</u>	<u>CUAA Member</u>	<u>Appeal Officer</u>
Student	Steve Taylor	Bill Cario Liz Polzin	Ryan Peterson Cindy Fenske	Al Prochnow
Staff	Al Prochnow	Liz Polzin Steve Taylor	Ryan Peterson Cindy Fenske	Bill Cario
Faculty	Bill Cario	Al Prochnow Liz Polzin	Al Prochnow Cindy Fenske	Leah Dvorak

Jurisdiction: Past Purview

- Under the former administration Title IX jurisdiction extended to anywhere in the world.
- Coordinators with investigators led the grievance process.
- Most recently, the courts have reversed sanctions on respondents because the recipient was not accorded his/her constitutional rights.
 - e.g. Duke Lacrosse, UVA Frat – Rolling Stone, Doe v U. Michigan, Purdue U. “Alcohol isn’t the cause of sexual assault, Men are”



Jurisdiction: Current Regulations



*“No person in the **United States** shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any **education program or activity** receiving Federal financial assistance” (p. 13)*



*Section 106.45(b)(3). Similarly, **nothing in these final regulations prevents** a recipient from **addressing conduct that is outside the Department’s jurisdiction** due to the conduct constituting sexual harassment occurring outside the recipient’s education program or activity, or occurring against a person who is not located in the United States. (p. 46)*

CONCORDIA UNIVERSITY'S NEW SEXUAL MISCONDUCT . . .

A Title IX Component ₁

A University Component ₂

2
Parts

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N
E



Violation Terminology: **SAME DEFINITION** vs DIFFERENT DEFINITION

Title IX Offenses

- 1. **Sexual Harassment**
- 2. **Clery Sexual Assault Offenses**
 - 2a **Forcible Rape**
 - 2b **Forcible Sodomy**
 - 2c **Sexual Assault w/an object**
 - 2d **Incest**
 - 2e **Statutory Rape**
 - 2f **Fondling**
- 3. **Dating Violence**
- 4. **Domestic Violence**
- 5. **Stalking**
- 6. **Retaliation**

VAWA
Offenses

University Offenses

- 7. **Sexual Harassment**
- 8. **Non-Consensual Sexual Intercourse**
- 9. **Non-Consensual Sexual Contact**
- 10. **Sexual Exploitation**
- 11. **Stalking**
- 12. **Dating Violence**
- 13. **Domestic Violence**
- 14. **Retaliation**
- 15. **Improper Restraint or Detention**
- 16. **Fraud and Lying**

Portal > Resources > Title IX Compliance > Click Here

🏠 > ABOUT CONCORDIA > OFFICES

TITLE IX & SEXUAL MISCONDUCT POLICIES

Provost Office Advancement Compliance Human Resources Office of Institutional Effectiveness Institutional Review Board Parking & Campus Safety Registrar Office of Strategic Planning

Rectangular Snip

Title IX & Sexual Misconduct Policies Whispering Pines Retreat Bethesda College

TITLE IX & SEXUAL MISCONDUCT POLICIES

Title IX Staff

Reporting an Incident

Sexual Misconduct Policies

Grievance Process (Adjudication) >

Appeal Process >

Mandatory Reporters

Supportive Measures >

Pregnant and Parenting Students

Sexual Misconduct Policies

Title IX is a federal law that protects people from sexual harassment and sexual violence. Title IX also protects people from discrimination based on sex in any educational program or activity receiving federal financial assistance. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Title IX reads, in part, as follows:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance.

(Title IX of the Educational Amendments of 1972 to the 1964 Civil Rights Act)

[SUBMIT A REPORT](#)

[APPEAL PROCESSES](#)

[SUPPORTIVE MEASURES](#)

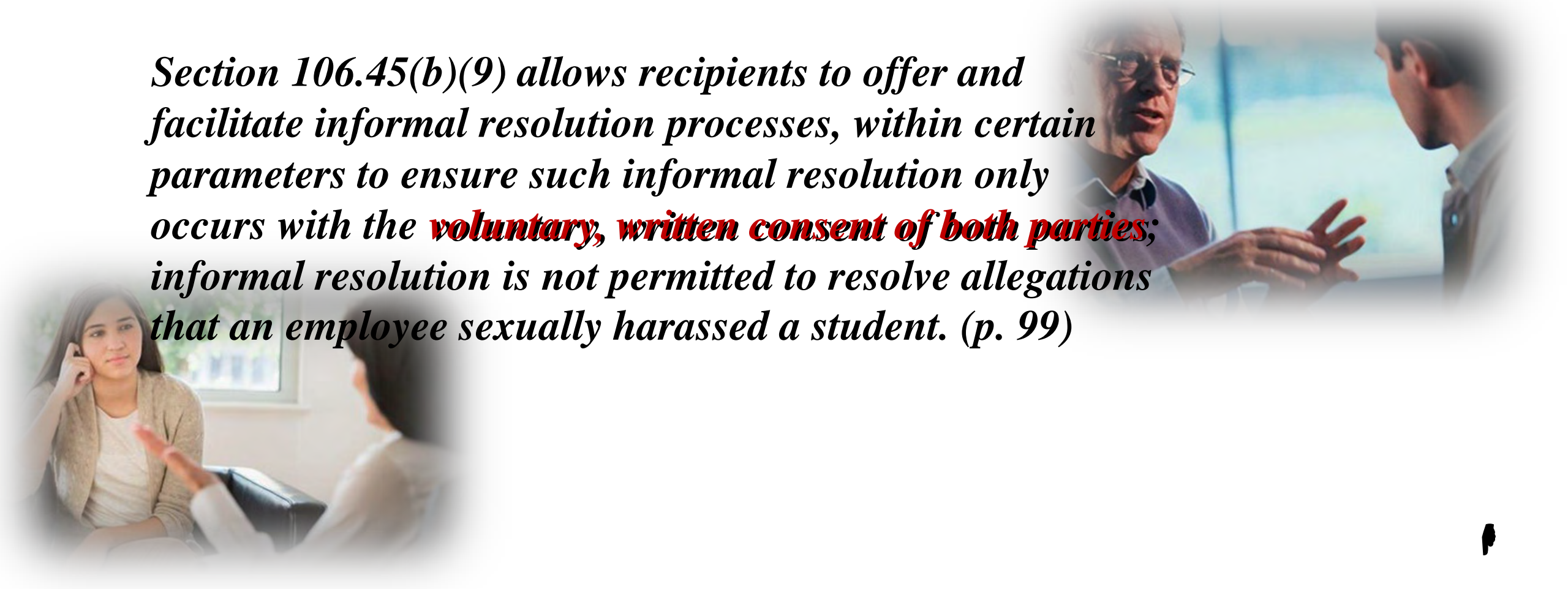
What constitutes sexual harassing behavior?

Sexual harassment is unwelcome, gender-based verbal or physical behavior that is objectively offensive and is severe, persistent, or pervasive. The effect of harassment creates a hostile environment and/or interferes with, denies, or limits a person's ability to benefit from Concordia's educational programs and/or activities. [Learn more about CU's Sexual Misconduct Policy here.](#)

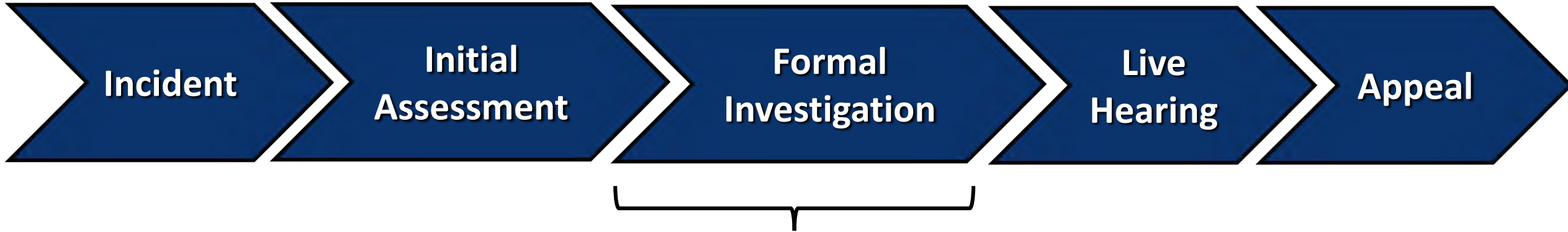


Ability to Offer an Informal Resolution Process

*Section 106.45(b)(9) allows recipients to offer and facilitate informal resolution processes, within certain parameters to ensure such informal resolution only occurs with the **voluntary, written consent of both parties**; informal resolution is not permitted to resolve allegations that an employee sexually harassed a student. (p. 99)*



Informal Resolution



- Only following a formal complaint
- Must be voluntary & written (signed)
- Either party may withdraw at any time
- Conducted by trained facilitator
- Agreement – signed contract

Formal Complaint - Charges Issued

Made in **writing** to the Title IX Office and must include . . .

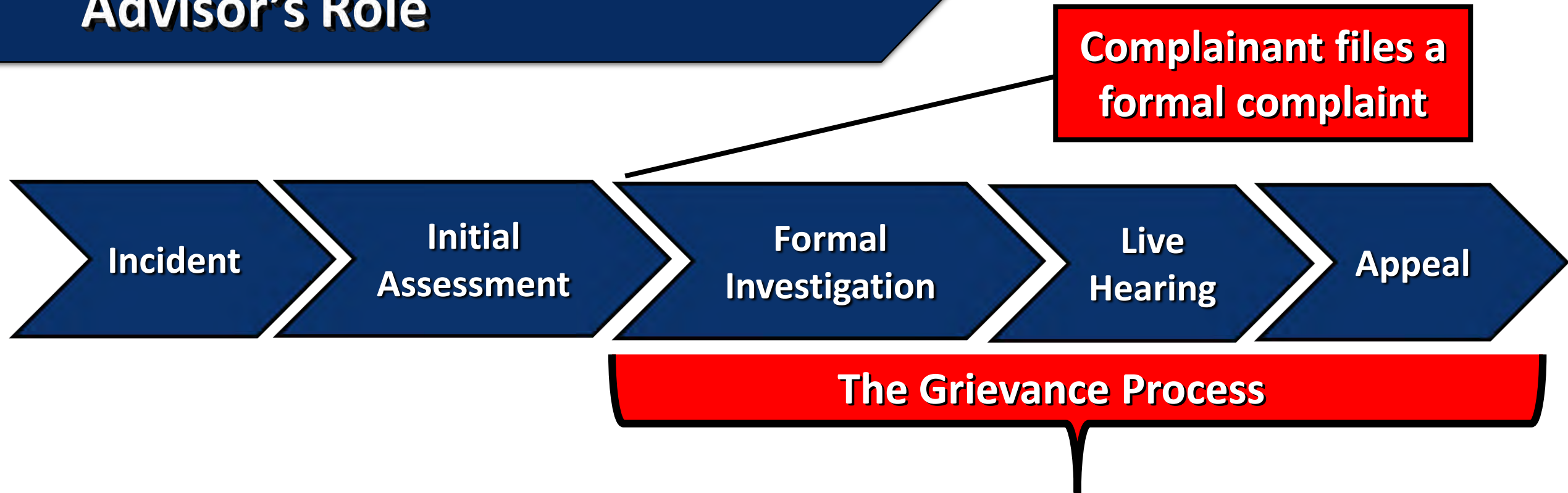
- Violation (date, time, and location, and nature of the alleged misconduct)
- Signed by complainant
- Charges Made (chapter & verse in Student C. C. or Employee HB)
- Name of complainant
- Title IX Coordinator may also file complainant without complainant
- Example: *John Doe you are charged with violating the Code of Student Conduct, Article 2, § D **2a Forcible Rape** on or about (date) against (name of complainant) at (location). It is alleged that you . . .*

Note: Having a victim repeatedly “re-live” the behavior is a form of re-victimization.

Investigation - Evidence Collection

- Title IX Office does the investigations and collects the evidence
- *In the written notice of allegations required under § 106.45(b)(2), a recipient will notify the parties of the grievance process under § 106.45, including the **requirement that both parties be able to review and inspect evidence obtained as part of the investigation** that is directly related to the allegations raised in a formal complaint. (p. 1500 – 01)*
- *These final regulations require a recipient to provide a **written notice** upon receipt of a formal complaint of sexual harassment, **to both parties**, that the parties may have “an advisor of their choice, who may be, but is not required to be, an attorney” pursuant to § 106.45(b)(2)(i)(B), and **also require** (in § 106.45(b)(5)(iv)) **a recipient to provide the parties with the same opportunities to have an advisor present** during any grievance proceeding, without limiting the choice or presence of advisor for either the complainant or respondent. (p. 1573)*

Advisor's Role



... also require a recipient to provide the parties with the same opportunities to have an advisor present during any grievance proceeding, without limiting the choice or presence of advisor for either the complainant or respondent. (p. 1573)

How do you treat the parties?

- This is **NOT** the complainant's case – it is the University's case.
- The University has the burden of gathering the evidence and the burden of proof.
- Treat complainants and respondents equitably.

§ 106.44(a) requires a recipient to treat complainants and respondents equitably by offering supportive measures as defined in § 106.30 to a complainant, and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. (p. 1588)

How do you treat the parties?

- *[T]hese final regulations prescribe that the only recipient official who is authorized to initiate a grievance process against a respondent is the Title IX Coordinator. (p. 71)*
- *The Department believes that the final regulations benefit respondents by ensuring that recipients do not impose disciplinary sanctions against a respondent without following a grievance process that complies with § 106.45, 560 and that the prescribed grievance process gives strong due process protections to both parties. (p. 371)*

How do you treat the parties?

- The recipient **must presume the non-responsibility** of respondents until conclusion of the grievance process.
 - ✓ *Section 106.45(b)(1)(iv) requires recipients to presume the **respondent is not responsible until conclusion of the grievance process**, because such a presumption reinforces that the burden of proof remains on recipients (not on the respondent, or the complainant) and reinforces correct application of the standard of evidence. (p. 285)*
 - ✓ 18 times mentioned in the regulations: **(p. 97, 116, 562, 720, 845, 846, 847, 848, 851, 861, 862, 871, 879, 1210, 1819, 1821, 2021).**

Emergency Removal

*With respect for a process to remove a respondent from a recipient's education program or activity, these final regulations provide an emergency removal process in § 106.44(c) **if there is an immediate threat to the physical health or safety** of any students or other individuals arising from the allegations of sexual harassment. A recipient must provide a respondent with notice and an opportunity to challenge the emergency removal decision immediately following the removal. (p. 574)*

Who does this?

The Emergency Removal Process

- **The Emergency Removal Committee (hereafter ERC) has the authority to remove any University community member who poses an immediate threat to the physical health or physical safety of a complainant, respondent, or any other person participating in the investigation or adjudication of the Title IX process.**
- **The ERC will be composed of 3 members as follows:**
 - **Student has alleged a threat: Title IX Coordinator (or designee), Member of the Counseling staff appointed by the T9C (with designee back-up), Dean of Students (or designee)**
 - **Employee has alleged a threat: Title IX Coordinator (or designee), Member of the Counseling staff appointed by the T9C (with designee back-up), Human Resource Administrator appointed by the T9C (or designee).**

The ERC Removal Process

- **In making the decision to remove a respondent on a temporary basis, the ERC will use the following criteria.**
 - **This meeting would include interviewing any individual who has relevant information regarding the immediate threat of the respondent.**
 - **Before making a decision, the ERC must meet with the respondent and allow the respondent to address the allegations of the immediate threat.**
 - **Consider only the physical safety of the potential victim(s).**
 - **Assess the available supportive and/or proscriptive measures that can remediate the immediate threat thus allowing the respondent to remain as a member of the University community.**

The ERC Removal Process

- **Assess the credibility and relevance of the information received.**
- **Assess the nature and severity of the potential harm.**
- **Assess the duration of the risk.**
- **Assess how likely it is that the potential harm will occur.**
- **Assess the imminence of the potential harm.**
- **Determine that there is no other reasonable or restrictive remedies available other than emergency removal.**

Campus Safety's Role in Title IX Cases



W. Scott Lewis

Partner, TNG, LLC

Spokane

= independently organized TED event

3 Quotes on Retraumatizing

Just Retelling the Trauma May be Retraumatizing by Peter Levine

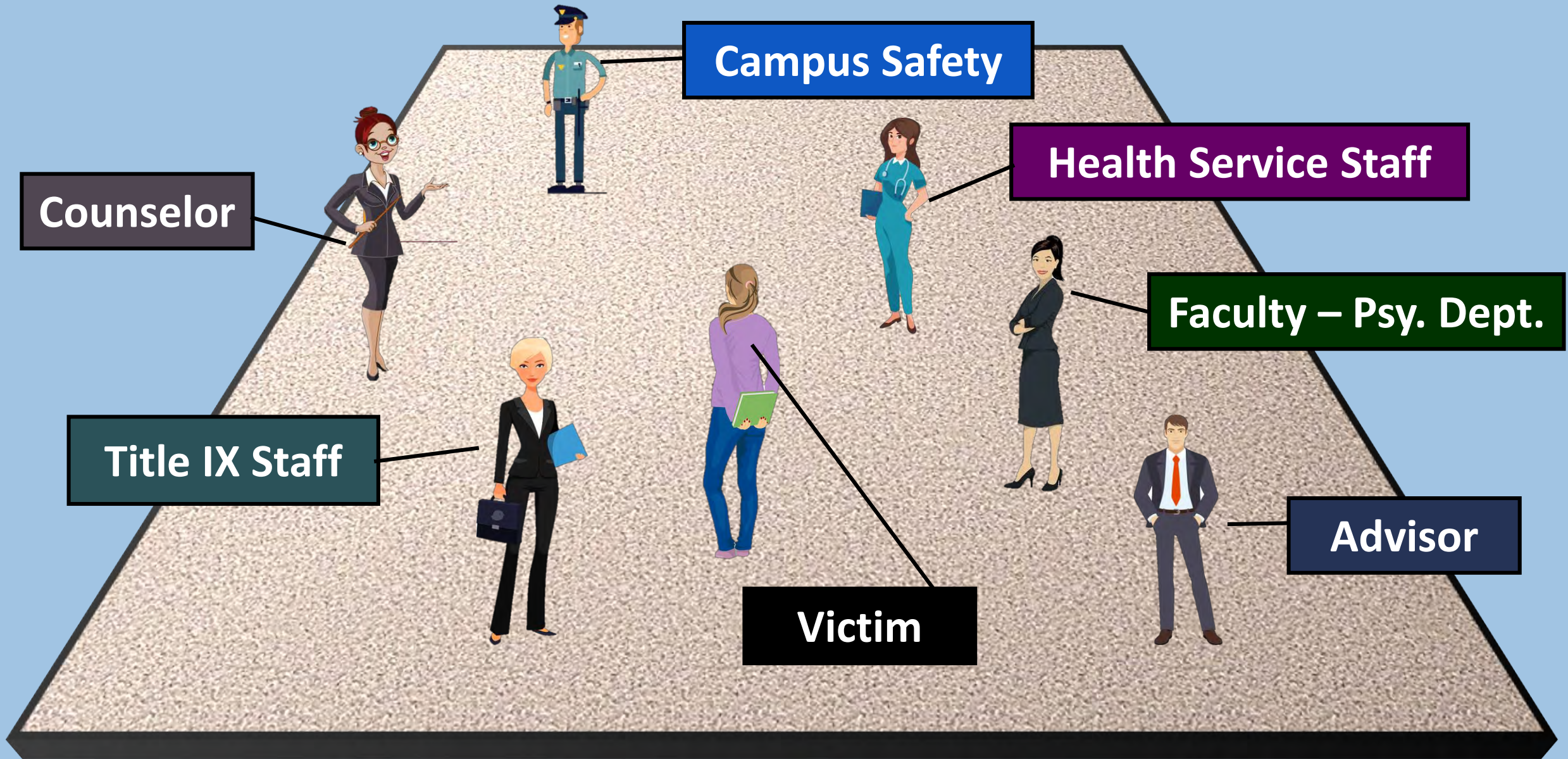
Just exposing a client to his or her traumatic memories and having the person relive them [is], at best, unnecessary... and at worst retraumatizing.

Supporting Survivors of Trauma: How to Avoid Re-traumatization (Online MSW)

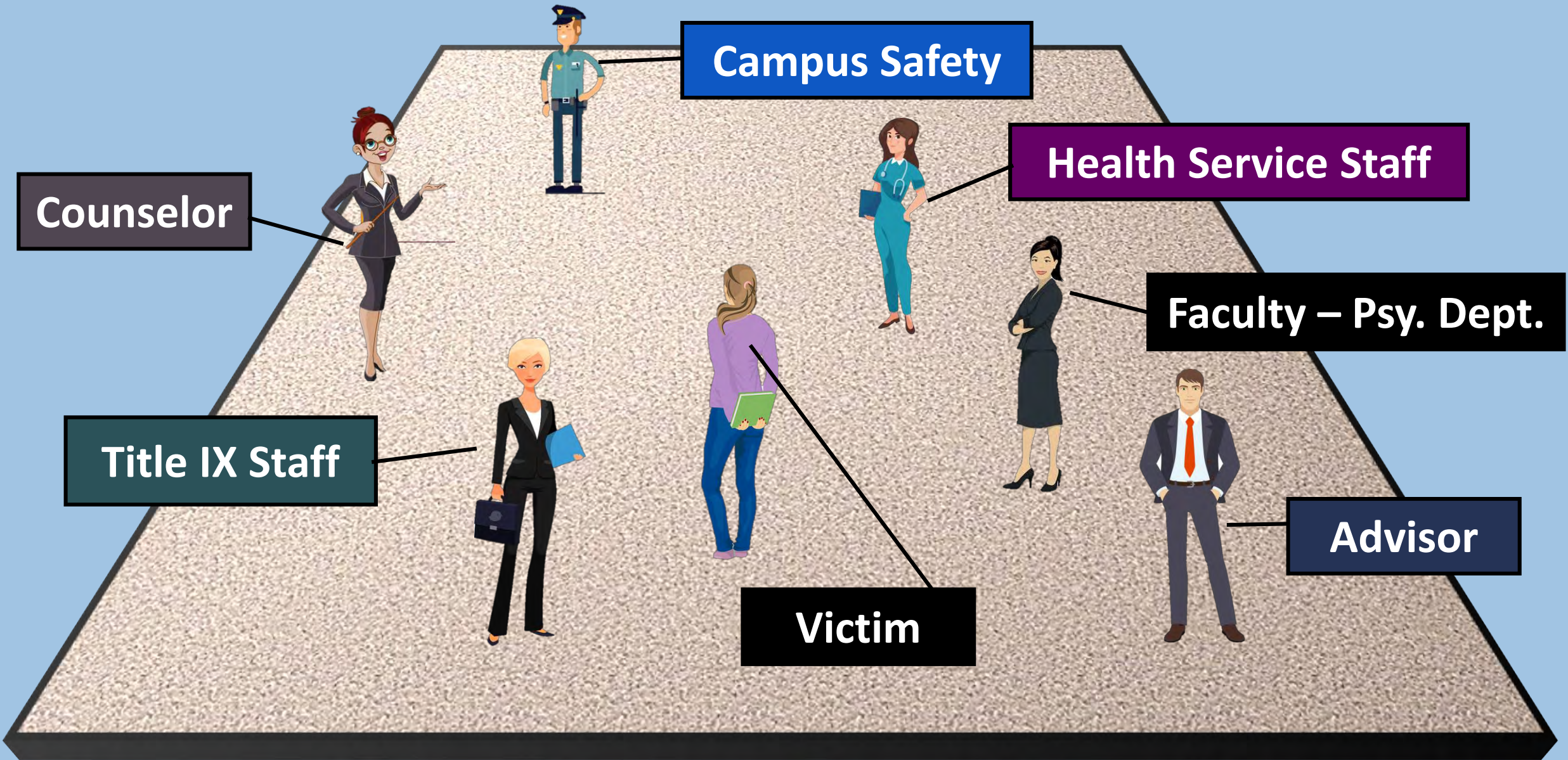
This retelling of these events can exacerbate symptoms of post-traumatic stress disorder (PTSD) and potentially re-traumatize the person.

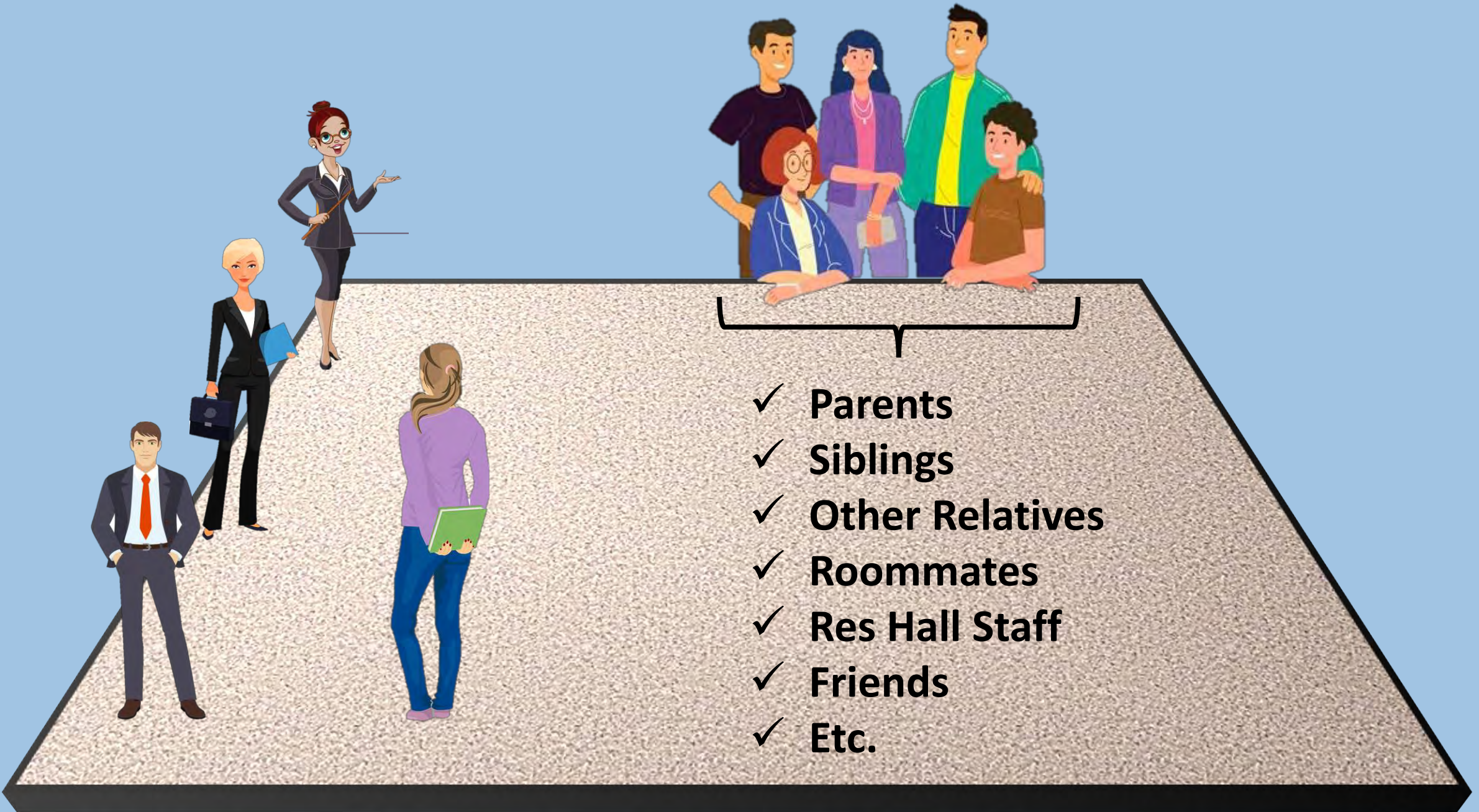
7 Ways to Avoid Re-Traumatizing A Trauma Victim by Tamara Hill

1. Do not force the person to talk about the trauma: Forcing someone to talk about a terrible event is making someone re-live the experience and all of the negative emotions that come with it.



What if all these trained professionals want to help?





- ✓ Parents
- ✓ Siblings
- ✓ Other Relatives
- ✓ Roommates
- ✓ Res Hall Staff
- ✓ Friends
- ✓ Etc.

What should a Campus Safety Officer do?



Scott Lewis' "Car Wreck Mode" 2 Questions

- ***Are you OK?***
- ***What can I do to help you?***

Once you have said this then, Scott says . . .

. . . Get them to the person who can help.

Contact a Title IX Coordinator

CUW Title IX Staff

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Fridge Magnet

Questions

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Answers