

RESPONDING TO GENDER-BASED VIOLENCE ON CAMPUSES:

What is an Advisor of Choice?

The term-of-art “advisor of choice” is used by many institutions of higher learning to describe a person that is available to assist someone through a campus conduct process. The term subsequently became codified through the Violence Against Women Reauthorization Act of 2013 (VAWA). Various VAWA provisions amended the Clery Act.¹ As of July 1, 2015, the Clery Act requires Ohio campuses² to permit complainants and respondents to be accompanied by an advisor of choice in meetings and proceedings related to the investigation and adjudication of allegations of sexual violence, dating violence, domestic violence, and stalking. Campuses are not allowed to 1) limit the choice of advisor or 2) bar the presence of an advisor.

What is the Role of an Advisor?

The emphasis is on the word “advisor.” They are there to support and usher complainants and respondents through the campus’s investigation and disciplinary process, while helping maintain the intended educational and non-adversarial environment tone.³ They are not considered advocates. Therefore, the profession of the advisor should not impact the fairness of the proceedings.

Campuses may elect to narrow the role of advisors. Of course, any restrictions must be applied equally across the board to all advisors, regardless of any other professional credentials someone may possess.

Frequently Asked Questions about Advisors of Choice

Q *Must campuses allow advisors to be present in campus conduct proceedings and related meetings?*

A It depends. If an Ohio campus participates in federal financial aid programming and the campus proceeding involves what would be considered a Clery crime,⁴ then yes. The Clery Act “clearly and unambiguously supports the right” of the complainant and the respondent to be accompanied to any meeting or proceeding by an advisor.⁵ If the proceeding pertains to a Title IX action, the rule is that if one party is allowed to have an advisor, then the other party must have the same opportunity.⁶

Q *Can an attorney or a rape crisis or domestic violence advocate be selected to be an advisor of choice?*

A Yes. The profession of the person is not a factor in who is allowed to be an advisor. In fact, the advisor does not have to be a professional, but can be a friend or family member. Campuses do not have the right to dictate who can and cannot serve as an advisor.

Q *Are there any restrictions on who can be selected as an advisor?*

A Yes. There should not be a conflict of interest with an advisor. That means the advisor cannot participate in any other way during the investigation or disciplinary process for that particular incident, including being a witness. Also, due to the dynamics involved in gender-based violence, the same person should not act as an advisor to both

Q *If a campus allows advisors of choice, must a respondent or complainant obtain one?*

A No. Campuses must provide the same opportunities for complainants and respondents to be accompanied by an advisor of their choice. A campus cannot require that a person have an advisor.

Q *May a campus create a potential pool of advisors for respondents and complaints to select from?*

A Yes. In fact, it is encouraged. If campuses develop a list, they should train individuals on the list so that they are familiar with the goals and processes of the campus response to gender-based violence. However, complainants and respondents are not limited to selecting their advisor from an existing pool.

Q *Can a campus decide the level of a participation of an advisor?*

A Yes. While a campus cannot prevent the presence of an advisor, a campus can "establish restrictions on an advisor's participation in a disciplinary proceeding."⁷ These restrictions must be applied in all cases and should be outlined in the response protocols.

Q *What are some common restrictions placed on advisor participation ~~and~~ if they are familiar with the goals as QIC Pan KICID*