
UNIVERSITY OF ALABAMA
OFFICE OF EQUAL OPPORTUNITY AND TITLE IX PROGRAMS

ADVISORS DURING FORMAL HEARINGS UNDER TITLE IX PROCESS

Pursuant to the Title IX and Sexual Misconduct Policy (“the Policy”), Respondents and Complainants¹ are entitled to one support person/advisor (used interchangeably throughout the Policy and this document) throughout the Title IX and Sexual Misconduct grievance processes.² In general, this support person/advisor has a limited role to provide support and guidance throughout the grievance process and is generally not permitted to actively participate in any meetings or proceedings connected with either grievance process, except as specifically modified herein.

Role of the Advisor During the Title IX Formal Hearing Process

If a case is proceeding under the Title IX Process and is referred to a live formal hearing following the issuance of the Investigative Report, both parties must have an advisor who will conduct cross-examination on behalf of their respective parties. The advisor can be selected by the parties and may be an attorney at the parties’ own expense. If the parties do not have an advisor, the University will provide an advisor for the live formal hearing at no expense to the parties.

1) Pre-Hearing Meeting

Once the Investigative Report has been issued and the case referred to a formal hearing, the Title IX Coordinator will schedule separate pre-hearing meetings with the parties and their advisors. Attendance is mandatory for both the parties and their advisors. The meeting is to discuss processes for the live formal hearing and appropriate decorum.

Each party must notify the Title IX Coordinator (or designee) at least seven (7) calendar days prior to the pre-hearing meeting if they will be accompanied by an advisor of their choice and at their own expense at the live formal hearing. If the parties do not timely notify the Title IX Coordinator (or designee) of the identity of their chosen advisor, the University will assign an advisor to accompany the party to the pre-hearing meeting and the formal hearing.

2) Cross-Examination

The advisors selected by the parties or provided by the University must conduct cross-examination on behalf of their respective parties at the formal hearing. The goal of the advisor during cross-examination is to pose questions intended to advance their respective party’s perspective with respect to the specific allegations at issue. Advisors are essentially a

¹ When an employee or community member is the Respondent, no support person/advisor may be present during any meeting under the Policy, except as modified herein. If an employee is the Respondent and is also a student, no support person may be present during any meeting under this Policy except for charges being pursued through the Code of Student Conduct, except as modified herein.

² For additional information about the different grievance processes, please review **Appendices 1 and 2** of the Policy.

proxy for the parties, with the goal of relaying their respective party's own questions to the other party or witness. Following direct examination by the Decision-Maker, the parties' advisors may ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such questioning must be conducted directly, orally, and in real time by the parties' advisor and never by a party.

Before a Complainant, Respondent, or witness answers a question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-Maker's determination regarding a question's relevancy is considered final and may not be challenged during the hearing by the parties or their advisors.

A party's advisor may appear and conduct cross-examination even when the party whom they are advising does not appear.

3) Role in Remainder of Formal Hearing

Other than the cross-examination portion of the hearing, the parties are expected to speak on their own behalf during the formal hearing. The party's advisor may not otherwise make statements, speak on the parties' behalf, challenge relevancy determinations, or otherwise directly participate in the proceedings. Other than conducting cross-examination, the advisor is subject to the other limitations and requirements imposed by the University on advisors.³

The Decision-Maker may remove or dismiss an advisor who becomes disruptive or who does not abide by the limitations on their participation and require the party to use a different advisor.

Choice of Advisor

The parties may select their own advisor, who may be an attorney, at their own expense. Alternatively, the parties may request that the University provide an advisor for the live formal hearing, at no additional expense to the parties. If a party identified an advisor for the pre-hearing meeting who then fails to appear at the formal hearing, the University will assign an advisor to conduct cross-examination for the party at the live formal hearing. This may require the formal hearing be rescheduled to allow for an advisor to be assigned to the party.

If the University provides a party with an advisor, the party cannot "fire" the assigned advisor during a hearing. If, however, the party asserts the assigned advisor is refusing to "conduct cross-examination on the party's behalf" then the University will provide the party an advisor to perform that function, whether that means counseling the assigned advisor to perform that role, or stopping the hearing to assign a different advisor. If a party to whom the University assigns an advisor refuses to work with the advisor when the advisor is willing to conduct cross-examination on the party's behalf, then that party has no right of self-representation with respect to conducting cross-examination, and that party would not be able to pose any cross-examination questions.

Rules of Decorum

³ For additional information about the role of support persons/advisors during the grievance processes, review the Support Person/Advisor handout on the Title IX website.

The following rules of decorum apply to those advisors conducting cross-examination on behalf of a party during a Title IX Formal Hearing:

- Advisors are prohibited from questioning parties and witnesses in an abusive, intimidating, or disrespectful manner.
- Advisors may only ask questions relevant to the allegations during cross-examination. Duplicative questions, including those asked and answered, are considered irrelevant.
- Advisors (as well as the parties) are not permitted to challenge the Decision-Maker's relevancy determinations during the formal hearing.
- Advisors must only ask a party or witness one question at a time to allow the Decision-Maker time to issue a determination regarding the question's relevancy. Advisors must give the Decision-Maker sufficient time to issue the relevancy determination before proceeding with further questioning.
- Advisors must refrain from repeating or echoing answers provided by a party or witness in response to cross-examination questions.
- Advisors must refrain from speaking over the party or witness being questioned and should allow the questioned individual sufficient time to answer the question posed.
- Advisors must refrain from making gestures, facial expressions, audible comments, or the like, as displays of approval or disapproval during cross-examination or at any other time during the formal hearing.

The University (including any official acting on behalf of the University such as the Title IX Coordinator, investigator, or Decision-Maker) has the right at all times to determine what constitutes appropriate behavior on the part of an advisor and to take appropriate steps to ensure compliance. If the University determines that the advisor is refusing to comply with the limitations as stated herein, the University may take steps to end the behavior, including providing the party with an alternate advisor to conduct cross-examination on the party's behalf.

Advisors and Support Persons During the Title IX Formal Hearing

As stated above, Respondents and Complainants are entitled to one support person/advisor during the grievance processes to provide guidance and support. The parties may elect to have one advisor during the formal hearing who will provide support/guidance, as well as conduct cross-examination on behalf of the party. Alternatively, the parties may also elect to have one advisor who will conduct cross-examination on behalf of the party and another support person who will provide guidance and support during the formal hearing.

If a party elects to have an advisor to conduct cross-examination and an advisor/support person to provide guidance and support, their participation will be limited based on their stated roles. Only one advisor may be designated to conduct cross-examination during the hearing. Both advisors are prohibited from actively participating in the formal hearing, except as expressly permitted herein, and are subject to all other requirements and limitations applicable to advisors/support persons during the grievance processes.