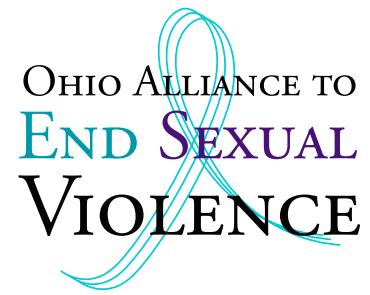


# RESPONDING TO GENDER-BASED VIOLENCE ON CAMPUSES:

## Understanding the Roles of those Supporting Complainants and Respondents



### 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.<sup>1</sup> As of July 1, 2015, the Clery Act requires Ohio campuses<sup>2</sup> 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.<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

**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 parties.

1 [The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act](#), 20 U.S.C. § 1092(f) (1990), with implementing regulations in the [Federal Register](#) 34 C.F.R. 668.46.

2 This is a requirement only for campuses that participate in Title IV or Higher Education Act financial aid programs.

3 For overview of the differences, see [The Campus Disciplinary Process is Different Than Criminal Justice Proceedings: Using the Correct Terminology Matters](#), OAESV (2016).

4 See, U.S. Department of Education, [The Handbook for Campus Safety and Security Reporting 2016 Edition](#) (June 2016) (Chapter 3 provides definitions and examples of what crimes fall under the Clery Act).

5 U.S. Department of Education, [Final Rules](#), 34 CFR 668 (October 2014) (final rules governing VAWA amendments designed to provide affirmative guidance to help campus policymaking).

6 Office for Civil Rights, [Questions and Answers on Title IX and Sexual Violence](#) (April 29, 2014).

**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.”<sup>7</sup> 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?*

**A** Not all campuses restrict the role advisors can play. Some examples of limitations that have been imposed include, prohibiting the advisor from speaking during meetings/proceedings and not permitting advisors to ask questions of witnesses or speak to the panel/decision-makers. Campuses can remove or dismiss advisors who become disruptive or who do not abide by the restrictions on their participation.

**Q** *Must a campus reschedule a meeting or proceeding if an advisor cannot participate due to a scheduling conflict?*

**A** No. As long as the campus provided sufficient notice of a meeting, the campus does not have to delay or cancel it because an advisor is not able to attend. On the other hand, campuses are encouraged to consider reasonable requests to reschedule.<sup>8</sup>

**Q** *Are communications between an advisor and the complainant or respondent protected under the law?*

**A** Complainants and respondents should be apprised of any limitations on confidentiality before they speak to anyone about the campus proceedings and reported incident. The role of the advisor per se does not hold any privilege under the law. Therefore, things shared between an advisor and the complainant or respondent are not protected and can be compelled. Advisors may try to limit the information they share with others as part of providing confidentiality, but this is a matter of practice and policy, not law.

If a confidential relationship already exists through the Ohio Revised Code §2317.02 between a potential advisor, a discussion should occur to determine if taking on the added role as advisor could compromise an existing confidential relationship.

**Q** *Is it best practice for campuses to designate on campus confidential sources for victims of gender-based violence?*

**A** Yes. Confidential sources are individuals who are specially trained to perform a survivor-centered, trauma-informed response on campus and can help answer questions, provide information, and help complainants navigate the options available both on campus and in the community.<sup>9</sup>

**Q** *Is the role of the advisor different than a confidential source?*

**A** Yes. A confidential source helps a complainant think about options and access resources, where an advisor of choice helps the complainant or respondent navigate the actual campus conduct investigation and disciplinary process.<sup>10</sup>

7 Supra note 5.

8 Id.

9 Confidential sources are only required to report aggregate data and therefore do not have a duty to provide identifying details to the campus about the incident. On some campuses, confidential sources may be referred to as advocates. For a more comprehensive discussion about confidentiality and confidential sources see, Ohio Department of Higher Education & Ohio Alliance to End Sexual Violence, [Transforming Ohio Campuses: A Toolkit for Implementing the Changing Campus Culture Initiative, Ohio Alliance to End Sexual Violence](#) (2016).

10 Id.