



ROLE AND EXPECTATIONS OF ADVISORS

RIGHT TO AN ADVISOR

- The parties may each have an Advisor¹ of their choice present with them for all meetings, interviews, and at a formal grievance hearing within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.² Parties also have the right to choose not to have an advisor in the initial stages of the investigation resolution process, prior to a formal grievance hearing.
- The parties are expected to inform the Director of Equal Opportunity and Title IX (hereafter referred to as the “Director”) of the identity of their advisor at least one (1) business day before the date of the scheduled interview or meeting (or as soon as possible if a more expeditious meeting is necessary or desired). A party may elect to change advisors during the process and is not obligated to use the same advisor throughout. The parties are expected to provide timely notice to the Director if they change advisors at any time.
- Similarly, parties are expected to inform the Director of who their hearing advisors will be, at least three (3) business days before the hearing. Advisors are subject to the same University policies and administrative rules, whether they are attorneys or not.
- The University cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.

SUPPORT PERSON

- The parties are encouraged to seek guidance and support from other individuals of their choosing for guidance and support throughout the process.
- A support person or advocate who is not designated as the party’s “Advisor” may not attend interviews or be present at a formal grievance hearing.

WHO CAN SERVE AS AN ADVISOR

- The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the reporting, investigation and/or informal or formal resolution process.

¹ Title IX permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

² “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a member of the Equal Opportunity and Title IX Team who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

- The parties may choose Advisors from inside or outside of the University community.
- Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Equity Hearing Panel.
- If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures.

UNIVERSITY PROCESS ADVISOR

- The Director will also offer to assign an advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available, the University Process Advisor will be trained by the University and be familiar with the University's resolution process.
- University Process Advisor can provide clarification about University policies and procedures, and may attend all meetings, investigation interviews, and resolution proceedings, at which their advisee is entitled to be present, and review documents and materials from the investigation, the draft and final investigation report, and any relevant documents related to the outcome resolution process. A University appointed advisor cannot provide legal advice.

ADVISOR'S ROLE IN MEETINGS AND INTERVIEWS

- The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.
- Where applicable under state law or University policy, Advisors who are attorneys are permitted to fully represent their advisees or clients in resolution proceedings, including all meetings, interviews, and hearings.
- Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and University's policies and procedures.

SHARING INFORMATION WITH THE ADVISOR AND PRIVACY

- The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.
- The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The parties must either complete and submit this form to the Director or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.
- If a party requests that all communication be made through their attorney Advisor, the University will not comply with that request.

PRIVACY OF RECORDS SHARED WITH ADVISOR

- Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly

authorized by University. University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

- The University's communication protocol with the Complainant or Respondent does not permit going through a representative or other intermediary because of the importance of direct communication with the Complainant or Respondent during the investigation and resolution process as described in the Policy.
- Parties may share this information directly with their advisor or other individuals if they wish. The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their advisors. An advisor may be copied on any correspondence or communication related to the investigation process at the direction of the Complainant or Respondent. If a party requests that all communication be made through their attorney advisor, the University will not comply with that request.
- FERPA Waivers: Students who participate in the investigation process with an advisor must complete a Family Education Rights and Act (FERPA) waiver prior to participating in the University investigation and resolution process.

EXPECTATIONS OF ADVISORS

- Advisors should assist the parties with preparing for any meeting or interview that is associated with the investigation, hearing, and/or appeal process, including accompanying the party to investigation interviews, pre-hearing conferences, and the equity hearing, and are expected to advise ethically, with integrity, and in good faith.
- The University generally expects an advisor to adjust their schedule to allow them to attend University meetings when planned but may change scheduled meetings to accommodate an advisor's inability to attend, if doing so does not cause an unreasonable delay. The University may also make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.
- Advisors will be afforded an opportunity to meet in advance of any interview or meeting with the Director, investigator, and decision-maker to ask questions, address concerns, and seek clarification on University process and procedures.
- All advisors are subject to the same University policies and procedures, whether they are attorneys or not. The University may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.
- The parties are expected to respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the advisor generally may not speak on behalf of their advisee, the advisor may consult with their advisee, either privately as needed, or quietly by passing notes during any resolution process meeting or interview, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks to step out of meetings to allow for private consultation.
- Advisors who act outside of their role or who impede or obstruct proceedings, who disseminate information to third party individuals or organizations, who represent themselves to others who are engaged in our process as having any other role than an Advisor in our process may be excluded from investigation and resolution proceedings.
- Any Advisor who oversteps their role as defined by this policy will be warned once and only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor

role, the Advisor will be asked to leave the meeting. When an Advisor is removed from a meeting, that meeting will typically continue without the Advisor present. Subsequently, the Director will determine whether the advisor may be reinstated or replaced by a different Advisor.

EXPECTATIONS DURING A HEARING

- In accordance with this Policy and the U.S. Department of Education regulations applicable to Title IX, cross-examination is permitted during the hearing and must be conducted by the parties' advisors. Extensive questioning of the parties and witnesses will also be conducted by the decision-maker(s) during the hearing.
- The parties are not permitted to directly question each other or any witnesses.
- The Advisor may not provide testimony, and may not speak on behalf of the advisee during cross-examination.
- If a party does not have an Advisor for a hearing, the Director will appoint a trained advisor aligned with the party for the limited purpose of conducting any cross-examination. A party may reject this appointment and choose their own Advisor, but they may not proceed without an advisor.
- If the party's advisor will not conduct cross-examination, the party may identify an alternative Advisor, or the University will appoint an Advisor to conduct cross-examination, regardless of the participation or non-participation of the advised party in the hearing, itself.

ASSISTANCE IN SECURING AN EXTERNAL ADVISOR

Parties can find legal assistance through a number of community resources listed below. A party can choose to hire independent legal counsel to serve as an advisor. In that event, the individual is solely responsible for any fees related to the representation.

- Santa Clara County Bar Association Lawyer Referral Service is the largest lawyer referral service in Silicon Valley. This is a public service provided by the Santa Clara County Bar Association. <https://sccbba.community.lawyer/> phone: (408) 971-6822.
- For representation, Respondents may wish to contact organizations such as:
 - FACE (<http://www.facecampusequality.org>)
 - SAVE (<http://www.saveservices.org>)
- Complainants may wish to contact organizations such as:
 - The Victim Rights Law Center (<http://www.victimrights.org>),
 - The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.
 - The Times Up Legal Defense Fund :<https://nwlc.org/times-up-legal-defense-fund/>