

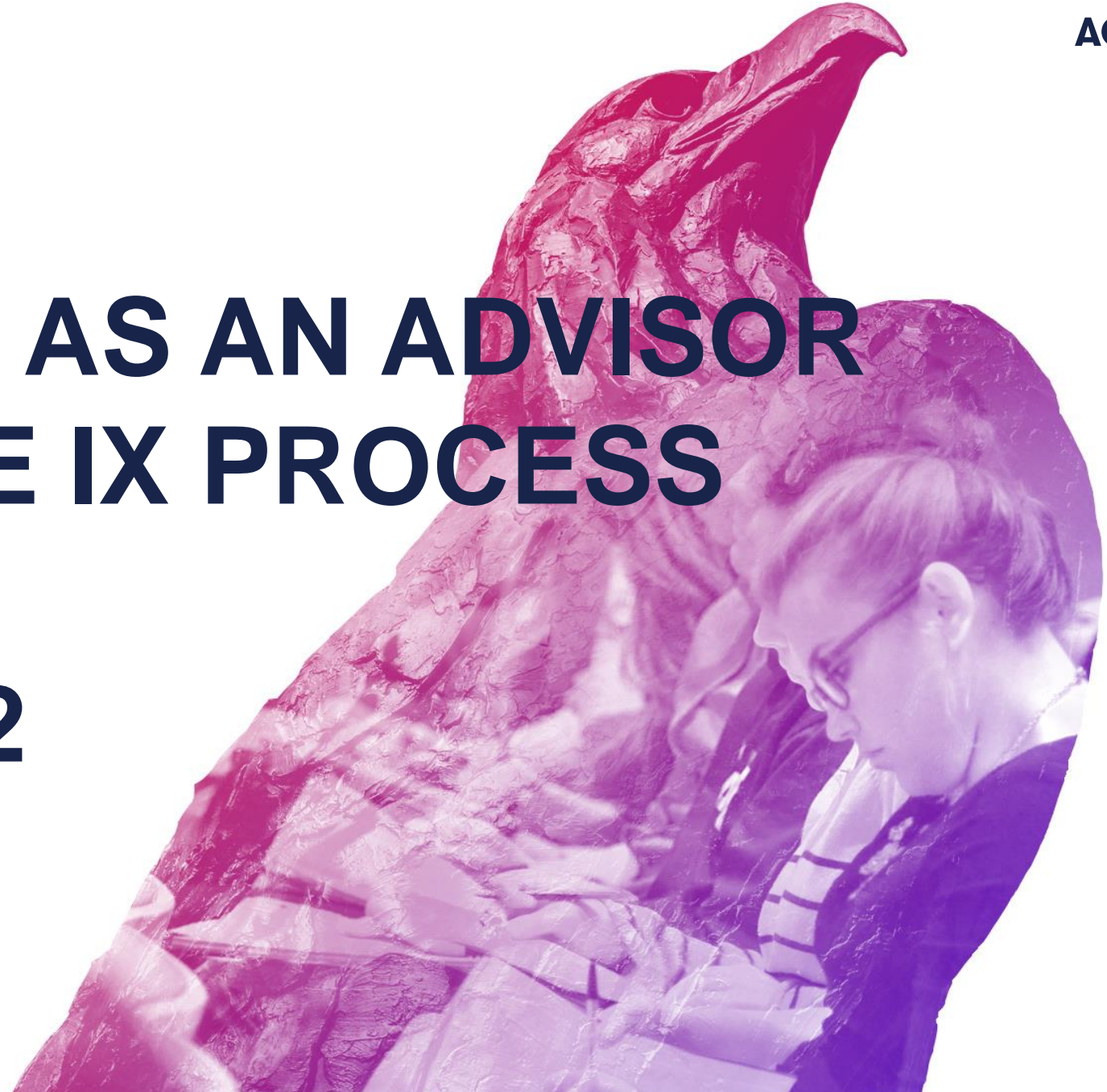


AMERICAN UNIVERSITY  
WASHINGTON, DC

CHALLENGE  
ACCEPTED

# YOUR ROLE AS AN ADVISOR IN THE TITLE IX PROCESS

Feb. 22, 2022



## WHO WE ARE:

The Office of Equity and Title IX leads the university's efforts to prevent and respond to sexual assault, harassment, and discrimination on the basis of race, color, national origin, sex, sexual orientation, gender, gender identity, gender expression, pregnancy or parenting, age, religion, disability, or other bases under federal or local laws and regulations.

# WHO YOU ARE:

You have been chosen to help a party navigate the grievance process with respect to alleged violations of University policy. You will **accompany your party to the hearing**, and you will **cross-examine** the other party and any witnesses on behalf of your party. Other than at a live hearing for the sole purpose of conducting any cross-examination, an advisor may not speak on behalf of a party.

## Expectations:

- You understand American University's Title IX and Sexual Harassment Policy
- You advise your party (Respondent or Complainant)
- You are actively engaged and attentive during the hearing

## Background: What is Title IX ?

Title IX is federal law which prohibits recipients of federal funding from discriminating on the basis of sex or gender in education programs or activities.

As a recipient of federal funding, American University has the responsibility and obligation to:

- Respond to;
- Remedy; and
- Prevent future occurrences of sexual harassment, including sexual violence.

**We all have a responsibility to our community under Title IX.**

*“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.”*

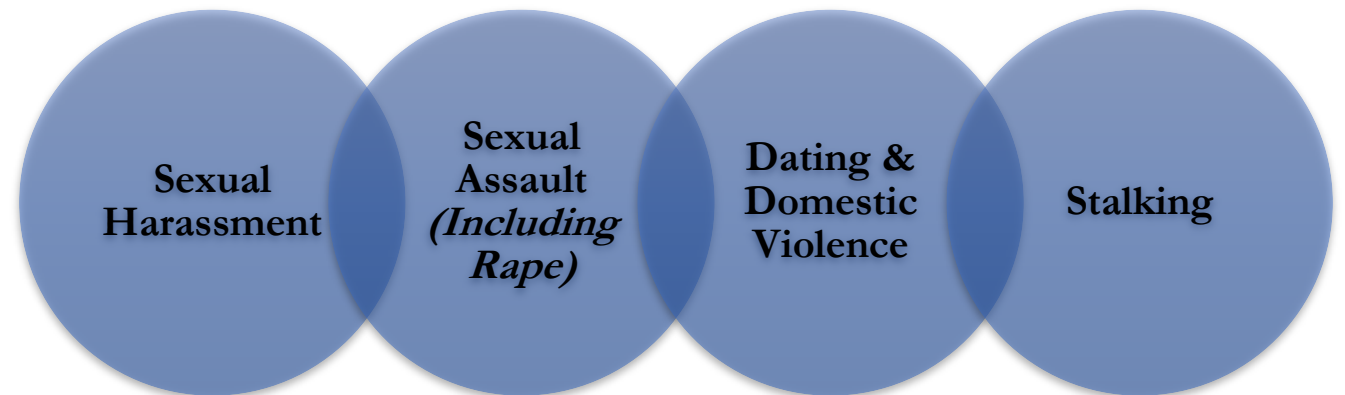


# How does Title IX apply to Sexual Harassment?

Under Title IX, sexual harassment is prohibited in AU education or activities. This includes unwelcome sexual conduct or advances (verbal or physical), including:

- Instances in which an AU employee **conditions** the provision of aid, benefits, or services based on an individual's participation in sexual acts (*quid pro quo harassment*);
- Unwelcome conduct that is **severe, pervasive, and objectively offensive** in a way that **denies equal access** to education or opportunities;
- Sexual assault, or any **sexual act without consent** of another person, (including circumstances where a person is incapable of giving consent).

## *Types of Cases you advise upon*



# 5 STEPS (OF GRIEVANCE PROCESS)

1. Notice of Allegations
2. Investigation & Report
3. Live Hearing
4. Sanctions
5. Appeal





# INDIVIDUALS INVOLVED IN TITLE IX PROCESS

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## COMPLAINANT

- AU Community member who is alleged to have been the **subject of conduct** that could constitute Title IX Sexual Harassment.

## RESPONDENT

- AU Community member (within the United States) who has been reported to have been the **perpetrator of conduct** that could constitute Title IX Sexual Harassment.

## AVP for Equity & Title IX Coordinator

- Oversees the whole process.
- Ensures the investigators, decision-makers, and others involved in the process are properly trained.
- Ensures advisors are available for the live hearings.

*Parties to the formal complaint*



# INDIVIDUALS INVOLVED IN TITLE IX PROCESS

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## INVESTIGATOR

- Gathers all relevant evidence.
- Organizes relevant evidence into a report.
- **Does not make a determination.**

## HEARING PANEL (DECISION-MAKERS)

- Following the hearing, the Hearing Panel will consider all the evidence and make a determination whether the Respondent has violated the Policy.
- **The advisor will interact most with the hearing panel during the grievance process.**

## ADVISORS

- Both parties must be accompanied by an advisor at the live hearing.

## SANCTIONING PANEL

- The Sanctioning Panel will review the Hearing Panel's written determination letter and determine appropriate sanction(s).



# Advisor Role in Cross-Examination

The requirement that the University provide a Title IX Advisor is new and was codified into law in 2020.

- Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and **never by a party personally**.
- This measure of questioning and cross-examination by the advisors (and not the parties) aims to **reduce any harm or re-traumatization** that may occur to the other parties as a result of the hearing process.



# Advisor Summary

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## Advisors WILL:

- Understand the University's grievance process and their role within that process;
- Participate in any meetings required by the Title IX Coordinator or designee;
- Cross-examine the other party and witnesses during the hearing subject to considerations of relevance and appropriateness.

## Advisors SHOULD:

- Review evidence and investigation reports;
- Provide logistical and general support or advice to a complainant or respondent.

## Advisors will NOT:

- Speak on behalf of the Complainant or Respondent during the hearing or stand in for a party in their absence;
- Be a witness to the investigation;
- Testify at the hearing;
- Share their personal views;
- Develop questions during the live hearing (these are provided by the Complainant or Respondent);
- Ask cross examination questions not requested by the Complainant or Respondent;
- Contact a witness or other party participating in the investigation process;
- Impede the hearing in an obstructive manner;
- Determine a finding.

# Conflict of Interest

**Before you serve as a Title IX Advisor, you must ensure you do not have a Conflict of Interest:**

- If you are a witness to the case, you cannot be the advisor.
- If you filed the report, you cannot be the advisor.

**The following do not count as Conflict of Interest:**

- Having served as a Title IX Advisor on a prior case.
- Identifying as a certain sex or gender.
- Having legal knowledge or training.

**If you think you have a conflict of interest, advise the Title IX Coordinator immediately.**

# ADVISOR ROLE IN 5 STEPS (OF GRIEVANCE PROCESS)

1. Notice of Allegations
2. Investigation & Report
- 3. Live Hearing**
4. Sanctions
5. Appeal



## Upon receipt of a Formal Complaint, the Title IX Coordinator will provide a Notice of Allegations to both parties with:

- Notice of grievance process and alleged harm.
- Statement that the Respondent is presumed not responsible for the alleged conduct.
- **Notice that each party may have an advisor of their choice.**
- Parties will be given equal opportunities to inspect and review evidence.
- Applicable University policies that prohibit knowingly making false statements.
- The University's prohibition against retaliation.

## Advisor Role regarding Notice of Allegations (Not required by University appointed advisors)

- 1. Meetings and interviews:** An advisor can accompany the party to all meetings during the investigation phase.
- 2. Preparation:** Advisors may help the parties prepare for each meeting and are expected to advise ethically with integrity and in good faith.
- 3. Private consultations:** Advisors may provide private consultations to their party **except** during questioning of the party.

# Step 1: Notice of Allegations

## Advisor Role regarding Investigation & Report

- Advisors do **NOT** perform the Investigation (done by Title IX Investigators).
- Advisors may be asked to meet with the Title IX Coordinator, or another University administrator, in advance of any proceedings to **understand the expectations of the role**, privacy considerations, and appropriate decorum.
- The **parties may be accompanied by their advisor** during any meeting related to the Formal Complaint. **The advisor is a non-participating presence** who solely observes and provides support during the investigation.
- The University will not delay scheduling of proceedings based on an advisor.
- While the investigator gathers information provided by the parties, **advisors may not contact the other party or any witness.**

## Review of Primary Investigative Report and Evidence

- The Investigator will send to each party and their advisor the evidence.
- At least 10 days prior to a hearing, the Investigator will send the final investigative report to each party and each party's advisor, if any, for their review and written response.

# Step 2: Investigation & Report

*The University Investigator will conduct a **prompt, thorough, fair, and impartial investigation.***

## Hearing Panel

- The Title IX Coordinator will select a Hearing Panel comprised of 3 faculty and staff members. The Panel will select a Hearing Panel Chair.
- The Hearing Panel Chair is responsible for:
  - final decisions on all procedural issues;
  - to exclude questions due to relevancy; and
  - to ensure a fair and expedient administration of the hearing.
- Any person, including either party or the party’s advisors, who disrupts a hearing may be excluded by the Hearing Panel Chair for cause.

## Hearing Format

- The hearing will be live, with all questioning conducted in real time.
- The hearing will be conducted entirely virtually through the use of remote technology so long as the parties and Hearing Panel are able to hear and see one another in real time.
- The University will audio record the hearing for review and appeal. All other recordings of the hearing are prohibited.



**STEP 3:  
LIVE  
HEARING**

## Advisors' Role in the Live Hearing

### 1. Hearing preparation


- The advisor should **review AU's Title IX & Sexual Harassment Policy**, as well as the final investigative report and provided materials.
- Prior to the hearing, proposed questions must be submitted to the Title IX Coordinator or designee who will provide it to the hearing panel. **The advisor must communicate with the party to get these questions.**

### 2. Hearing participation

- Advisors are required to **perform the cross-examinations** on behalf of their party. The party may not conduct any cross-examination directly.
- The advisor may ask questions but must not make statements or speeches.

### 3. Private consultations

- Advisors may **provide private consultations** with their party except during questioning of the party, insomuch as it does not distract or disturb the hearing.
- Private consultations may include additional questions that the party wishes their advisor to ask.




**STEP 3:  
LIVE  
HEARING**





## Hearing Procedures


1. Hearing Panel Chair shares Introductory Statement, Acknowledgement of Recording & Confidentiality, and Hearing Procedures;
2. Hearing Panel Chair Reading of Allegations;
3. Questioning of the Investigator by the Haring Panel Chair;
4. Questioning of the Complainant by the Hearing Panel Chair;
5. Cross-examination of the Complainant by the Respondent's advisor;
6. Questioning of the Respondent by the Hearing Panel Chair;
7. Cross-examination of the Respondent by the Complainant's advisor;
8. Hearing Panel Chair questioning of other material witnesses (if applicable);
9. Cross-examination of other material witnesses by the parties' advisors;
10. Closing Comments from the Complainant;
11. Closing Comments from the Respondent;
12. Closing Statement from Hearing Panel Chair.

A photograph of the Washington Monument in Washington, D.C., with cherry blossoms in the foreground and a body of water in the background. The text 'STEP 3: LIVE HEARING' is overlaid on the image.

**STEP 3:  
LIVE  
HEARING**

## What happens if my advisee refuses to participate?


- The investigation and adjudication process will take place in the party's absence.
- The party may not later use their refusal to participate as a ground for appealing.
- **The advisor must still ask cross-examination questions even if the advisee does not come.**



**STEP 3:  
LIVE  
HEARING**

## Determination of Responsibility

- Following the hearing, the Hearing Panel will consider all of the evidence and make a determination, by a Preponderance of the Evidence, whether the Respondent has violated the University's Title IX Sexual Harassment Policy.
  - Reminder: Preponderance of Evidence means that it is **“more likely than not”** that the alleged incident occurred.
- The Hearing Panel will issue a written determination regarding responsibility to go to the Sanction Panel.




**STEP 3:  
LIVE  
HEARING**

## Final Steps – Live Hearing

### Appeal Option & Sanction Referral

- **Appeal Option**
  - The parties can appeal any finding.
- **Sanctions Referral**
  - If the Hearing Panel finds the Respondent responsible (for one or more of the allegations), the case will be referred to the University's sanctioning process for appropriate remedies and sanctions.
  - Remedies provided to the Complainant are designed to restore or preserve equal access to the University's education program or activity, and sanctions imposed on the Respondent may be disciplinary in nature.



**STEP 3:  
LIVE  
HEARING**

## Sanctioning Panel's Review & Deliberation

- The parties will be informed of the identities of the Sanctioning Panel members 48 hours before the hearing. The parties may challenge a member(s) of the Sanctioning Panel on the grounds of conflict of interest or bias.
- The Sanctioning Panel will review the Hearing Panel's written determination letter and determine the appropriate sanction(s).
  - The Complainant may submit a written statement describing the impact of the Title IX Sexual Harassment had on them and expressing a preference about the sanction(s) to be imposed.
  - The Respondent may submit a written statement explaining any factors that should be considered in determining the sanction(s).
  - The parties may provide their statements orally, or they may be submitted into the record for consideration by the Sanctioning Panel.
- The **parties and advisors are excluded from the Sanctioning Panel's** deliberations.
- The parties will receive, simultaneously and in writing, a **sanction outcome letter** within 5 days of the Sanctioning Panel's deliberation.

# STEP 4: SANCTIONS

## Appeal Process

- The parties may appeal: the dismissal, determination of responsibility, or sanctions.
- Grounds for appeal may include: procedural irregularity that affected the outcome; new evidence that was not available at the time of determination that could affect the outcome; a conflict of interest or bias from the Title IX Coordinator, Investigator, or decision-makers; or insufficient/excessive sanctions.
- The appeal must be submitted within 7 days after the case outcome. After a party has submitted an appeal, the other party shall be notified, and given an opportunity to respond within 7 days.

## Advisor Role regarding Appeals (Not required by University appointed advisors)

1. **Appeal Preparation:** An advisor may work with the party to determine if they wish to appeal the determination and if so, assist with submitting the request
2. **Appeal:** The appeal consideration is not an interactive process; the appeal decision-maker will review the record to make a determination

# Step 5: Appeals



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**QUESTIONS???**



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