

Kentucky Offers Clarity Over ?Non-Attorney Advisors in Title IX Proceedings

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There are a number of unanswered questions regarding the recently updated Title IX ("TIX") regulations. However, the Kentucky Bar Association (KBA) has answered one of them—does a non-attorney who represents a party as an advisor in TIX proceedings engage in the unauthorized practice of law? [In its latest opinion](#), the KBA states no.

The TIX regulations allow parties to choose their own advisors for TIX proceedings. The 2020 TIX regulations provide that such advisors are not required to be attorneys. The activities that a non-attorney TIX advisor may perform include offering the party advice regarding the party's TIX rights and liabilities as well as conducting cross-examination on behalf of the party during the live hearing. However, these activities typically constitute the practice of law under Section 3.020 of the Kentucky Rules of the Supreme Court. As a result, under normal circumstances, a non-attorney performing these advisory duties would be considered to be engaging in the unauthorized practice of law.

Additionally, the KBA previously issued an opinion stating that an individual who represents a party before a quasi-judicial body of an educational institution where the institution could recommend serious sanctions against the party is engaged in the unauthorized practice of law. Opinion KBA U-34. A non-attorney advisor representing a party in a TIX proceeding is engaged in precisely that type of activity.

Nevertheless, the KBA concluded that non-attorney TIX advisors are permitted to perform activities that would otherwise constitute the unauthorized practice of law because the regulations provide a "federal license" and thereby authorize non-attorney TIX advisors to perform the actions identified in the regulations.

While the KBA's opinion is limited to Kentucky, other jurisdictions may follow suit and offer opinions on this issue. It is vital to have a well-structured and fully compliant TIX program in light of any opinions, changes, and clarifications regarding the changing TIX regulations.

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