



INNOVATION FOR A HEALTHIER PLANET

MODEL DECORUM POLICY FOR TITLE IX GRIEVANCE PROCESS HEARINGS

August 2020. Please refer to <https://www.une.edu/title-ix> for the most current policy.

Purpose of the Rules of Decorum

Title IX hearings are not civil or criminal proceedings, and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education, writing about Title IX in the Final Rule “purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner.” The Department has determined that institutions “are in a better position than the Department to craft rules of decorum best suited to their educational environment” and build a hearing process that will reassure the parties that the institution “is not throwing a party to the proverbial wolves.”

To achieve this purpose, institutions may provide for reasonable rules of order and decorum, which may be enforced through the removal of an advisor who refuses to comply with the rules. As the Department explains, the removal process “incentivizes a party to work with an advisor of choice in a manner that complies with a recipient’s rules that govern the conduct of a hearing, and incentivizes colleges and universities to appoint advisors who also will comply with such rules, so that hearings are conducted with respect for all participants.”

At base, these Rules of Decorum require that all parties, advisors of choice, and institutional staff treat others who are engaged in the process with respect.

The rules and standards apply equally to all Parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

Rules of Decorum

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the complainant and respondent) and advisors. The University asks, but cannot mandate, that all advisors submit all questions planned to be asked of the parties during the hearing to the hearing officer twenty four hours prior to the hearing.

1. Questions must be conveyed in a neutral tone.

2. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
3. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
4. While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
5. When an advisor is not directly questioning a party the advisor is not to comment or interject into the hearing. The advisor can ask for a break during the hearing to speak to their advisee privately.
6. The advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the hearing officer.
7. The advisor may not use profanity or make irrelevant *personal* attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
8. The advisor may not ask repetitive questions. This includes questions that have already been asked by the hearing officer, the advisor in cross-examination, or the advisor in direct testimony. When the hearing officer determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.
9. Parties and advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

Warning and Removal Process

The hearing officer shall have sole discretion to determine if the Rules of Decorum have been violated. The hearing officer will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the hearing officer shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the hearing officer removes a party’s advisor, the party may select a different advisor of their choice, or accept an advisor provided by the institution for the limited purpose of cross-examination at the hearing. Reasonable delays (generally not to exceed 5 business days), including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A party cannot serve as their own advisor in this circumstance.

The hearing officer shall document any decision to remove an advisor in the written determination regarding responsibility.

For flagrant, multiple, or continual violations of this Rule, in one or more proceedings, advisors may be prohibited from participating in future proceedings at the institution in the advisor role on a temporary or permanent basis. Evidence of violation(s) of this agreement will be gathered by the Title IX Coordinator, Director of Student Conduct, or a designee of either and presented to the Dean of Students and Assistant Provost for Student Affairs, or designee, for cases involving students and/or the Associate Vice President of Human Resources & Chief Human Resources Officer, or designee, for cases involving employees.

The Dean of Students and Assistant Provost for Student Affairs for cases involving students and/or the Associate Vice President of Human Resources & Chief Human Resources Officer for cases involving employees shall consider the evidence under a preponderance of the evidence standard and issue a finding in writing and, if the finding is Responsible, shall include a Sanction. The finding shall be issued in writing to all Parties and Advisors (if there is a current case pending) within thirty (30) days unless extended for good cause. There is no appeal of this finding. Sanctions shall be higher for intentional re-disclosure of records than for negligent re-discourse.

In the event that an Advisor is barred permanently or for a term from serving in the role as Advisor in the future, they may request a review of that bar from the Dean of Students and Assistant Provost for Student Affairs for cases involving students and/or the Associate Vice President of Human Resources & Chief Human Resources Officer for cases involving employees/Other Appropriate Staff Member no earlier than three-hundred and sixty-five (365) days after the date of the findings letter.

Relevant Questions Asked in Violation of the Rules of Decorum

Where an advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by the decision-maker simply because of the manner it was delivered. Under that circumstance, the decision-maker will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules).