

Mercyhurst University
Decorum Policy for Title IX Grievance Process Hearings
2022 - 2023

Purpose of the Rules of Decorum

Title IX hearings are not civil or criminal proceedings, and are not designed to mimic formal trial proceedings. The U.S. Department of Education states in its Final Rule for Title IX that it “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.”

4. While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
5. 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 board chair.
6. The advisor may not use profanity or make irrelevant *ad hominem* 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.
7. The advisor may not ask repetitive questions. This includes questions that have already been asked by the hearing board, the advisor in cross-examination, or the party or advisor in direct testimony. When the hearing board chair determines a question is substantially asked and answered, the question is irrelevant to the hearing.
8. 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 board chair shall have sole discretion to determine if the Rules of Decorum have been violated. The hearing board chair will notify the offending person of any violation of the Rules.

Upon an egregious or a second violation of the Rules, the hearing board chair 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 board chair removes a party’s advisor, that 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, 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 board chair 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 Vice President for Student Life or designee for cases involving students/Director of Human Resources or designee for cases involving employees. The Advisor accused may provide an exp