

SUNY Optometry Decorum Policy for Title IX Grievance Process Student Conduct Hearings

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.” 85 Fed. Reg. 30026, 30319 (May 19, 2020). 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.” Id.

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. Id., at 30320. 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.” Id.

At base, these Rules of Decorum require that all parties, advisors of choice, and SUNY Optometry employees 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 reporting individual and respondent) and advisors:

1. Questions must be conveyed in a neutral tone.
2. Parties and advisors will refer to other parties, witnesses, advisors, hearing board members, and SUNY Optometry employees 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. The advisor may ask a question to a party or witness, and the hearing body chair will need to briefly assess the question before the party or witness answers the question. If appropriate, the hearing body chair will signal to the party or witness to answer the question.
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 body.
7. 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.
8. The advisor may not ask repetitive questions. This includes questions that have already been asked by the advisor. When the hearing body chair 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 body shall have sole discretion to determine if the Rules of Decorum have been violated. The hearing body will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the hearing body 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 body removes a party’s advisor, the party may select a different advisor of their choice, or accept an advisor provided by SUNY Optometry 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 body 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, or a designee of either, and presented to the Vice President for Student Affairs or designee for cases involving students, and the Vice President of Administration & Finance or designee for cases involving employees.

The Advisor accused may provide an explanation or alternative evidence in writing for consideration by the Vice President for Student Affairs or designee, or Vice President of

Administration & Finance or designee, as applicable. Such evidence or explanation is due within fifteen (15) calendar days of receipt of a notice of a charge of re-disclosure or improper access to records. There shall be no right to a live hearing, oral testimony, or cross-examination. The Vice President for Student Affairs or designee or Vice President for Administration & Finance or designee, as applicable, 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.

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).