

# CURRY COLLEGE

## TITLE IX RULES OF ORDER AND DECORUM

### I. SCOPE AND PURPOSE

Title IX hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. Instead they are primarily educational, and in the U.S. Department of Education, writing about Title IX in the Final Rule, “purposefully designed these final regulations to allow recipients to retain the 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 states 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 reassures the parties that the institution “is not throwing a party to the proverbial wolves.” Id.

To achieve this purpose, institutions may provide reasonable rules of order and decorum.

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

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

### II. RULES OF DECORUM

The following Rules of Decorum must be observed in the hearing and applied equally to all parties (meaning the complainant and respondent) and advisors:

- A. Questions must be conveyed in a neutral tone.
- B. Parties and advisors must refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally misname or misgender that person in communication or questioning.
- C. No party can act abusively and/or disrespectfully during the hearing toward any party, witnesses, advisors, or decision-makers.
- D. The advisor cannot yell, scream, badger, or physically “lean in” to a party or witness’s personal space. In addition, advisors cannot approach the other party or witnesses without obtaining permission from the Hearing Officer.

- E. The advisor cannot use profanity or make irrelevant ad hominem attacks upon a party or witness. Questions are interrogative statements used to test knowledge or understand a fact; they cannot include accusations within the text of the question.
- F. The advisor cannot ask repetitive questions. That includes questions that the Hearing Officer asked, the advisor in cross-examination, or the party or advisor in direct testimony. The advisor must move on when the Hearing Officer determines a question has been “asked and answered” or is otherwise not relevant.
- G. Parties and advisors cannot take action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether a party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

### **III. WARNING AND REMOVAL PROCESS**

To keep decorum in the process, an advisor who refuses to comply with the rules may be removed. *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.*

- A. The Hearing Officer has the sole discretion to determine if the Rules of Decorum were 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 has the discretion to remove the offending person or allow them to continue participating in the hearing or any other part of the process.

- B. If a 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, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed.
  - A party cannot serve as their advisor in this circumstance.
  - The Hearing Officer documents any decision to remove an advisor in the written determination regarding responsibility.

C. For flagrant, multiple, and/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 following:

- Cases involving Students - Vice President for Student Affairs and Dean of Students
- Cases involving Staff – Vice President of Human Resources
- Cases involving Faculty - Provost

D. The Advisor accused may provide an explanation or alternative evidence in writing for consideration to the following:

- Vice President for Student Affairs and Dean of Students for cases involving students;
- Vice President of Human Resources for cases involving staff;
- Provost for cases involving faculty.

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 is no live hearing, oral testimony, or cross-examination.

The preponderance of the evidence standard is used to decide on the finding. The finding is issued in writing to all Parties and Advisors (if there is a current case pending) within thirty (30) days unless extended for a good cause. If the Advisor is found responsible there will be a Sanction. Sanctions will be determined by the appropriate party (see above). Advisors found responsible will be progressively disciplined as outlined in the Employee and Faculty Handbooks.

E. Appeal

There is no appeal process to this finding. If 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 Vice President for Student Affairs for cases involving students/Vice President of Human Resources for cases involving staff/Provost for cases involving faculty no earlier than three-hundred and sixty-five (365) days after the date of the findings letter.

#### **IV. RELEVANT QUESTIONS ASKED IN VIOLATION OF THE RULES OF DECORUM**

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When an advisor asks a relevant question that violates the Rules, such as yelling, screaming, badgering, or leaning into 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). See 85 Fed. Reg. 30331.

## **V. RESPONSIBLE OFFICIAL**

The individual responsible for this policy is the Title IX Coordinator. The office responsible for this policy is the Office of Title IX.

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