



Loyola University Maryland
Decorum Policy for Sexual and Gender-Based Misconduct Proceedings Involving a Student Respondent

Purpose of the Rules of Decorum

Sexual and Gender-Based Misconduct proceedings, which includes hearings, meetings, and interviews under the Student Respondent Title IX Grievance Procedures and the Student Respondent General Sexual Misconduct Process, 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 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, witnesses, advisors of choice, and University employees (or designees) treat others who are engaged in the process with respect and civility.

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, respondent, or witness.

Advisor Role in the Process

The complainant and respondent may each have no more than two people, defined as advisors, present throughout the entire process. The advisor may be a personal supporter of the party’s

choice, a licensed attorney, an advocate, or an advocate supervised by an attorney. The advisor of choice can also include parents or others who are not full-time members of the University community.

The advisors may attend hearings, meetings, and interviews with the complainant or respondent, consult privately with the complainant or respondent during hearings, meetings, and interviews, except when such consultations during questioning of the student they are advising at a proceeding are deemed disruptive by the hearing chair, decision-maker, or investigator, and assist the party they are advising with the exercise of any right during the proceedings. The advisor is not allowed to address the investigators, hearing panel, or decision-makers except to engage in cross-examination during the live hearing under the Student Respondent Title IX Grievance Procedures (See Appendix A). There is no direct cross-examination by parties or their advisors permitted in Student Respondent General Sexual Misconduct Process (although, in all cases, parties will be given the opportunity to submit relevant questions to be asked of the other party and any witnesses, as described more specifically in the applicable procedures).

Rules of Decorum

The following Rules of Decorum are to be observed in all hearings, meetings, and interviews under the Student Respondent Title IX Grievance Procedures and Student Respondent General Sexual Misconduct Process and applied equally to all parties to Sexual and Gender-Based Misconduct hearings (meaning the complainant, respondent, witnesses, and advisors). In addition to the rules below, for rules of decorum specific only to the Student Respondent Title IX Grievance Process, see Appendix A.

1. Policies and procedures for the hearing as outlined in 6. Sexual and Gender-Based Misconduct Policy of the Loyola University Maryland Community Standards and as implemented by the hearing chair must be followed.
2. No party may act abusively or disrespectfully during toward any party, witnesses, advisors, hearing panel members, officials, or other persons involved in implementing the proceedings. No party may use unnecessary profanity or abusive language.
3. Parties, witnesses, and advisors will refer to other parties, witnesses, advisors, and University employees using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication.
4. While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this process, and certainly may not excuse conduct that would violate these Rules of Decorum.
5. Parties, witnesses, and advisors may take no action that a reasonable person from the perspective of the affected party would see as intended to intimidate that person

(whether party, witness, or official) into participating or not participating in the process or meaningfully modifying their participation in the process.

Warning and Removal Process

The Warning and Removal Process applies to hearings under the Student Respondent Title IX Grievance Procedures and Student Respondent General Sexual Misconduct Process. The hearing chair shall have sole discretion to determine if the Rules of Decorum have been violated. The hearing chair will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the hearing 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 chair 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 own advisor in this circumstance.

The hearing chair shall document any decision to remove an advisor for the hearing record.

For violations of the Rules of Decorum occurring in other meetings or interviews under the Sexual and Gender-Based Misconduct proceedings, the University official responsible for overseeing the meeting or interview may exercise the rights of the hearing chair set forth above.

For flagrant, multiple, or continual violations of the Rules of Decorum, 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 the Rules of Decorum will be gathered by the Title IX Coordinator, Director of Student Conduct, or a designee of either and presented to the Dean of Students for alleged violations involving students' advisors. The advisor accused may provide an explanation or alternative evidence in writing for consideration by the Dean of Students. Such evidence or explanation is due within fifteen (15) calendar days of receipt of a notice of a charge of violating the Rules of Decorum. There shall be no right to a live hearing, oral testimony, or cross-examination. The Dean of Students 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 an outcome such as a permanent or temporary ban from participating as an advisor. The finding shall be issued in

writing to all parties and advisors (if there is a current case pending involving the advisor) within thirty (30) days unless extended for good cause. There is no appeal of this finding. If an advisor is barred permanently or for a term from serving in the role as advisor, they may request modification or removal of that bar from the Vice President for Student Development or designee no earlier than three-hundred and sixty-five (365) days after the date of the findings letter.

Appendix A

Rules of Decorum specific to Student Respondent Title IX Grievance Process and Cross-Examination

1. Cross-examination questions must be conveyed in a neutral tone.
2. During cross-examination, 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 chair.
3. The advisor may not use profanity or make *abusive* attacks upon a party or witness during cross-examination. Questions are meant to be interrogative statements used to test knowledge or understand a fact, not to intimidate, harass, or badger a party or witness.
4. The advisor may not ask repetitive questions, which are questions that have already been asked by an advisor in cross-examination. When the hearing chair determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.

Process for Cross Examination

As outlined in section 6. Sexual and Gender-Based Misconduct Policy of the Loyola University Maryland Community Standards, Cross-examination of the parties and witnesses by one advisor of choice will be permitted during the live hearing. All questions are subject to a relevance determination by the Chair. The advisor, who will remain seated during questioning, will propose the question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased. The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may explore arguments regarding relevance with the advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

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 hearing chair simply because of the manner it was delivered. Under that circumstance, the hearing chair 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.