Credibility

FOR COORDINATORS, HEARING OFFICERS, ADVISORS & INVESTIGATORS

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What is Credibility?

- **Definition of credibility (Miriam Webster)**
  - 1: the quality or power of inspiring belief
  - 2: capacity for belief

In the Title IX process, Credibility refers to the process of weighing the accuracy and veracity of evidence.

Credibility and honesty are not identical.
What role does credibility play in Title IX?

- Credibility gives weight to evidence
- All evidence must be evaluated for credibility in terms of the strength of source, content, and plausibility
- Credible evidence is used to determine responsibility findings
- The whole point to the process is to identify whether an incident (or incidents) were policy violations and credible evidence provides the support for a decision
Who determines credibility?

- Investigators **assess** credibility; Hearing Officers **determine** credibility

- Investigators and Hearing Officers both ask questions that may go to credibility

- Investigators provide information that can support or contradict credibility of a source

- Only the Hearing Officer(s) make a final determination of credibility in the Title IX process

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Barriers to assessing credibility

- Bias towards members of a certain group – both positive and negative
- Previous experience with the individual – both positive and negative
- Inability to identify trauma-based responses and behaviors
- Inability to separate personal morals/beliefs from the situation
- False belief that witness corroboration is needed to establish credibility
- Limited information
- Interviewee fears sharing the information
To assess credibility:

- Evaluate the source, content, and plausibility of what is offered in light of other evidence.
- If source, content, and plausibility are strong, credibility is strong.
- The best way to establish credibility is through corroboration (sufficient, independent evidence that supports the facts at issue).
- Look for subtle bias of which witnesses may not even be aware, including victim-blaming attitudes, group defensiveness (e.g., within teams, organizations, or departments), or whether the witnesses fear getting in trouble.
- First-hand information – especially what was seen – is best. Neutral witnesses may be more credible than witnesses that are friends with either party, but not necessarily.
Some aspects of credibility are:

- **Positional/locational**
  - Could they have seen/heard what they claim from where they were?

- **Based on knowledge/expertise**
  - This type of evidence/expertise needs to be properly qualified/established; typically includes information from medical providers.

- **Weighted, based on levels of corroboration and neutrality/impartiality/objectivity**
  - Camera recordings may be weighed more than a Party’s friend/witness.
If you say evidence isn’t credible, are you calling someone a liar?

- No. This is an objective evaluation.
- Like critical thinking, you are evaluating for source, content, and plausibility.
- Remember, how someone recalls an incident is through their perspective.
- Example – if someone believes they have been harassed, they’ve been harassed. An individual’s experience is valid, but their feelings/interpretation/reaction does not establish or prove that the conduct they experienced was a violation of policy.

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Is there a quantifiable “credibility”?  

- Some say 50.1% = credible  
- Preponderance is the evidentiary standard we use – more likely than not a violation of policy occurred  
- It is important not to think in terms of absolutes (All or Nothing)  
- It is expected that Hearing Officers will discuss credibility factors extensively in deliberating findings, and it is included in the hearing letter.

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Assessing Credibility (EEOC)

**FACTORS TO CONSIDER:**

- **Inherent Plausibility**
  - Is the testimony believable on its face? Does it make sense?

- **Demeanor**
  - Did the person seem to be telling the truth or lying?

- **Motive to falsify**
  - Did the person have a reason to lie?

- **Corroboration**
  - Is there other evidence that supports the testimony?
  - What is the value of self-corroboration?

- **Past Record**
  - Does the Party have a history of similar behavior?
Assessing Credibility (EEOC)

ADDITIONAL CONSIDERATIONS:

- Consideration of Bias
  - Overt and subtle (Explicit and Implicit)
  - Group defensiveness

- Analysis of Micro-expressions, Body Language, and Gesticulations
  - Be aware; but leave actual interpretation to the experts.

- Inconsistencies and Contradictions in testimony
  - Major vs Minor?
Assessing Credibility (EEOC)

- **Lying**
  - Why the lie? Motivation, Reason
  - Caution: All-or-Nothing evaluation of the Witness

- **Delay in Reporting**
  - Why the delay?
  - More recent incident? Possible Retribution?

- **Changes in RP’s behavior following the incident**
  - Examples?
  - Lack of changes in behavior = not traumatized, not credible?
Assessing Credibility (EEOC)

- Witnesses told immediately about the incident
  - “Outcry” witnesses

- Witnesses raising additional allegations about Responding Party
  - Relevant vs. prejudicial

Consensual relationships, Consensual acts do not preclude non-consensual policy violations

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Assessing Credibility (EEOC)

- Complainant is not required to tell an alleged harasser to STOP, but that can be helpful information, and effective in the moment.

- Explanations for why the misconduct occurred
  - Explanation vs Justification

- Past History
  - Where does it fit? Does it fit?
Important to remember:

A “RESPONSIBLE” finding can be established when the evidence is credible and sufficient, even if there were no Witnesses to the incident.


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Thank you for serving the hatter community!
For more information

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