



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

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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

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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

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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.

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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.

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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?

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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?

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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?

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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?

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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
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