

**CREDIBILITY
DETERMINATIONS UNDER
TITLE IX**

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WHO ASSESSES CREDIBILITY?

The regulations allow the LEA to determine how to make (and who makes) credibility determinations.

CAUTION:

If the investigator includes a credibility analysis in its investigative report, they must not make a determination regarding responsibility.

If an investigator's determination regarding credibility is actually a determination regarding responsibility, then this would violate the regulations.

The Decision-maker is obligated to objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence (and to avoid credibility inferences based on a person's status as a complainant, respondent, or witness).

CREDIBILITY FACTORS

- Inherent Plausibility
- Motive to Falsify
- Corroboration
- Consistency and Past Record
- Affect

INHERENT PLAUSIBILITY

Inherent plausibility is a key factor in Title IX investigations and refers to whether a witness's account of events is internally consistent, logical, and believable on its face.

Ask yourself:

- Is this testimony believable on its face?
- Does it make sense?

MOTIVE TO FALSIFY

Ask yourself:

- Did the person have a reason to lie?
- Why might someone lie? Watch for bias in answering this question.

Common motives for falsifying information, includes:

- Revenge and Malice
- Regret
- Misunderstanding of Consent
- Shifting Blame or Protection
- Social Pressure
- Mental Health Factors

CORROBORATION

Corroboration is the act of strengthening, confirming, or validating a statement or piece of evidence with additional, independent information. It is used in law to support witness testimony.

Is there witness testimony?

First-hand eyewitnesses?

Physical Evidence that supports the testimony?

CONSISTENCY AND PAST RECORD

Ask yourself:

- How is the person's testimony consistent overtime?
- Within interview? Between interviews? With witnesses?
- At the decision making phase?
- Subtle differences in how the person phrases events

Does the Respondent have a history of similar behavior in the past?

AFFECT

The affect (emotional state, behavior, and credibility) of a Complainant or Respondent is crucial throughout a Title IX case.

It helps investigators and decision-makers assess credibility, evaluate the impact of alleged misconduct, and determine appropriate sanctions.

While not determinative, ask yourself:

How might a reasonable person react after event? (there is NO right or wrong answer).

While affect is evaluated, Title IX procedures emphasize that respondents are presumed "not responsible" until evidence proves otherwise, regardless of their affect during the process.

WHAT QUESTIONS DO YOU HAVE?