



# **Investigators/Investigations – Part 4**

## **Documentation**

# Learning Outcomes and Training Topics

- Importance of Documentation in an Investigation
- The Involvement of Taking Detailed Notes
- Weighing Evidence and Assessing Credibility
- Finalizing the Investigation & Retention of Records

# Importance of Documentation in an Investigation

If your investigation is challenged, whether it is in the hearing panel or in a court: would you rely on your memory of the events or would you rather have your detailed notes available from that day?

This is why we leave a long paper trail (so-to-speak)

# The Involvement of Taking Detailed Notes

- Depending on how you choose and what is easiest for you, is how you take notes. Hand-written or typed on a device. Just be sure you know your device before going into the interview.
- A good way to note take is by using bullets under each question. This will help with the outline of the interview when you are typing up your report or filling in your notes.
- When you are quoting what the interviewee stated, always use quotation marks and do NOT change the language. Use their exact words, then note that is the language used.
- Be sure to make a note of who was in the interview by name and position (i.e., Reporting/Responding Party, Witness for Reporting/Responding Party, Advisors, Investigators etc.) Date and Time Started/Ended.

- Each party will be able to review your notes in the form of a transcript of the recorded interview. The TIXC will be the one to transcribe the recording; as well as get a copy to all parties with investigator's notes.
- Let's say that a person was being a jerk during the interview. Notating something like "Responding/Reporting Party was a real JO (jerk-off), will be read as biased, even if they were acting like one. The behavior should be noted something along the lines as "The Responding/Reporting Party was answering questions with a hostile and seemingly defiant tone during the interview when answering questions". It is okay to have such notations because we show that while giving due process to the student, we were met with hostility while allowing due process.

# Weighing Evidence

All evidence should be evaluated. This includes:

- Factual evidence provided by the parties and witnesses through statements, interviews, and other materials;
- Witness observations of the incident;
- Witness opinions about the incident; and
- Circumstantial evidence that supports or negates a party's statements or has bearing on the truthfulness of the party or witness.

## Helpful steps in evaluating the evidence:

- ✓ When reviewing all interview notes and materials, list the unanswered questions or information that needs clarification.
- ✓ Make a list of uncontested and contested information, then determine which of the uncontested information is most supported by the preponderance of the evidence.
- ✓ Obtain additional needed information if possible.
- ✓ List the facts relevant to the allegation that must be true for the allegation to be supported.
- ✓ Evidence presented by a person of authority such as an administrator or supervisor should be given no more credibility than evidence from a student or lower-level employee. Don't confuse seniority or hierarchy with expertise.

Since there will be co-investigators, these steps will be a good thing to work through together.

# Assessing Credibility

Credibility is not the same thing as honesty. A person can lie credibly too.

To assess credibility you must evaluate the source, the content, and the plausibility or quality of what is being offered.

When source, content and plausibility are strong, then credibility is strong.

Accurate credibility assessment becomes especially critical where the available evidence is an even split between parties.

Credibility is best established through corroboration which is obtained through sufficient independent evidence supporting the fact(s) at issue.

Credibility is multidimensional in that a witness's location and position can impact the credibility of their statement (i.e. could they actually hear what they heard, see what they saw, etc.)

Lack of temporal proximity and/or proximity to the source of information detracts from credibility (what someone witnessed in person is most valuable, not what was heard from a friend of a friend of a friend).

Temporal proximity can also affect credibility, particularly since incidents are often not reported until days, weeks, months, even years later. If time has passed since the incident, investigators should be mindful of witnesses using qualifiers like "I think," "I'm pretty sure," and "I seem to remember".

We want to "Trust - but verify" when assessing for credibility.

Analysis of micro-expressions and gestures from body language should be ignored, unless you are a licensed professional in this area. What we look for is, when asked a question or raise a certain topic and there seems to be a shift in body language (i.e. something that you see made them seem a little uncomfortable, they don't answer, squirm in their chair, something that seems different from their baseline from the beginning of their interview) that is a prompt to ask more questions about that topic, not an indication of deceit.

Inconsistencies and contradictions in testimony should be evaluated. Major inconsistencies in testimony are more likely to detract from credibility than minor inconsistencies. Sometimes, the more a person tells a story, the more they may remember OR the trauma of the event could also be causing inconsistencies or contradictions.

Lying itself, through commission or omission, is not an outright credibility killer. There are many reasons people may lie. As an investigator the job is to determine whether the lie is material to the allegations.

Changes in the behavior of the reporting party after the incident might add to credibility, including avoiding class, meetings, or certain areas of campus; struggling to keep up academic performance; seeking counseling. Individuals are affected differently by trauma so assess credibility accordingly.

The fact that a relationship was consensual one time OR the reporting party did not tell the alleged that the behavior was offensive does not affect credibility.

# The following do not add or detract from credibility of the responding party because they are irrelevant:

- Character witnesses and the character evidence they provide *"I've known him/her for fifteen years, he/she is such a good kid"* OR *"I know he/she would never do that"*
- Popularity with staff and other students - *"Everybody likes him/her; I just don't believe he/she would do that"*
- No history of past problems - *"He/She has never been in trouble before";*
- Academic performance - *"But he/she is a really good student. His/her professors really like him/her"*
- Importance to a team or program - *"He/she is our best athlete/trainer/tutor"*

# **The following do not add or detract from the credibility of the reporting party**

- Clothing
- Appearance
- Flirting behavior
- Gender Identity of the Reporting/Responding Parties

# Explanations for why the misconduct occurred do not add to credibility

- *"I didn't know it was against the rules"*
- *"I was just joking around"*
- *"He/she flirts all the time"*
- *"I was just flirting with him/her"*
- *"He/she was asking for it. They were leading me on!"*
- *"You have to understand, we guys have special needs"*
- *"It's no big deal. I don't know why he/she is so upset"*
- *"I wasn't lying. He/she really is a slut (or any other name)"*
- *"He/she's a snitch for telling on me"*

# Questions to consider when assessing credibility

- How might a reasonable person react to the incident?
- What was the effect of the behavior on the reporting party?
- Did the individual have a particular reason not to tell the truth?
- Is the evidence offered inherently plausible – does it make sense and is it believable?
- Is there evidence corroborating the information provided by a witness?
- Is there anything missing from the testimony that the witness/party may be omitting?
- Did the individual have the opportunity and ability to observe the things they discussed?
- Is there relevant past conduct (like a similar allegation) that needs to be considered?
- Was the witness/party under the influence of any substance that may impact the credibility of their testimony?

One last thing on credibility. We agree that the reporting party's general past sexual history should normally be out-of-bounds, but if he/she has a history of alleging sexual misconduct after bad breakups, we need to know that. The sexual history between the parties is fair game for the investigators' inquiry, but you may come to realize that it is irrelevant once you analyze it. It must be analyzed to determine whether it is relevant or not.

If there is a motive for bringing the allegation other than the desire to report misconduct it goes fundamentally to credibility. The motive may not destroy credibility, but fairness to the responding party demands that investigators explore that motive to determine how it impacts on the credibility of the reporting party.

Rather than hard-and-fast rules in the admissibility of past sexual history, investigators should explore fully between the parties and only go outside of the context if there is a compelling justification.

# Finalizing the Investigation & Record Retention

Once the investigation is done, all relevant evidence gathered investigators will write up their notes and piece it together.

I have a form for the investigators to work with that has all the pertinent "fill in the blank" areas.

The TIXC will be there to guide you and help you through the report writing to verify what is written and that no subconscious opinions have snuck out into the report. This can happen unintentionally.

Investigators will turn over all notes and evidence with their reports. Everything will be scanned into Maxient where our TIX files are housed.

We are required to keep all files on TIX reports, investigations and hearings for 7 years.

# Resources

- ATIXA 20 Minutes to Trained: Documentation
- ATIXA 20 Minutes to Trained Guide – Assessing Credibility
- ATIXA TIXKIT – Assessing Credibility

# QUESTIONS?

Next Meeting: March 19- Advisors