

common
Report Writing Errors
in Title IX & Civil Rights
Investigations

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INTRODUCTION

Writing reports is an integral part of any Title IX or other Civil Rights Investigator's role. Reports explain the findings of investigations and how investigators approached the task of fact-finding. Because these reports can impact lives drastically — sometimes resulting in expulsion from school or termination for accused parties — it's imperative that those tasked with report writing understand how to create reports that are thorough, precise, and fair. This paper explains some of the common errors Title IX and Civil Rights Investigators on college and university campuses tend to make when it comes to report writing to help you avoid such pitfalls.

1. SOFT REPORT WRITING

Soft writing refers to the practice of *not* telling things as they are in investigation reports. Write the facts and your findings as they are, without omitting or cushioning vital information because you feel that it may hurt one or more of the parties. Those impacted don't have to like what's written in your report; they just have to understand how you got there. In writing softly, investigators fail to set up the parties to understand that the process may not end as they hope, or may not give them the outcome they want. However, individuals involved in a Title IX or other civil rights investigation on campus need to realize this possibility before they read it in a completed report. For example, include that credibility analysis that indicates that someone may not have been completely truthful, and don't be afraid to explain why an investigation may not proceed further.

It's also important to be aware that even though you may not set out to write softly, if you are afraid of individuals' reactions, you may do so unintentionally. That does you a disservice, because it makes it more difficult to explain the rationale behind your conclusions, and makes it harder to develop the appellate responses you might have to write later on.

Avoid this misstep by making sure you are honest with all parties from the start. Let them know what to expect, including that they may not like the outcome. Also, explain that while that might be the case, you will also strive to help them understand how you arrived at decisions in your report.

2. OMITTING CREDIBILITY ASSESSMENTS

This mistake entails not including credibility assessments of statements (in part or whole), or omitting a rationale for your assessments. Making a credibility assessment but failing to include it in your report can lead to the appearance of bias (e.g., the perception that you give greater weight to one party's statements because you like that party more than the other, and not because you have an unbiased reason to believe one party over the other).

Likewise, don't just say that you found someone to lack credibility without stating why. Doing that invites frustration, lawsuits, and complaints. Explaining how you weighed the credibility of statements made by parties will help keep those reading your report from making erroneous assumptions about your rationale.

Include parties' possible motivation to lie, descriptions of changed statements, hesitancy on the part of the parties, and other factors that went into making your credibility assessment.

Additionally, it's important to be precise about how someone was inconsistent. A student may give a statement that is completely truthful and credible, but may have shaded the truth in a prior statement. Depending on the specifics of the situation, the previous truth shading might harm the credibility of the statements that came afterwards, or it might not. Credibility could also be damaged by a lack of plausibility or reasonability.

Sometimes, investigators may make the assumption that the accused parties are likelier to lie, shade the truth, or otherwise make deceptive statements as a way to protect themselves from negative outcomes, such as expulsion or termination. However, there is often reason for reporting parties to be dishonest as well, such as preserving reputation. So avoid making credibility assessments of only one party's statements.

Include such assessments in your reports even if you find those whose statements you're assessing completely credible. Regardless whether you believe someone is credible or not, explain why you believe that.

3. SERVING AS CROSS-EXAMINER

You represent the parties' opportunity to question each other. However, unlike in a legal matter, in which opposing parties may face off in court or through questioning by their respective attorneys, Civil Rights Investigators serve as a go-between, allowing each party to have questions answered by the other, without the adversarial component of a courtroom interrogation. As a Civil Rights Investigator, you are an impartial party collecting facts. Don't wait for a hearing to allow questions to be filtered by a committee chair, as that can result in an awkward situation and inappropriate questions being asked of the parties.

Investigators may choose to not pass on a question asked by one party to the other, based on a determination that the question (or possible response) is irrelevant or inappropriate. If you decide that a question posed by one party for the other should not be asked, explain what the question was and why it was irrelevant or inappropriate in your report.

At the same time, it's important that one party or the other isn't shut down. Give each person the opportunity to ask questions, and give them credit for possibly coming up with questions you hadn't thought of that could be helpful to your investigation. In addition to showing that you're listening to both parties equally and engaging in impartial fact-gathering, allowing both parties in a complaint the ability to have appropriate questions answered can get you closer to the truth.

4. IMPROPER OR INCOMPLETE POLICY ANALYSIS

Any policy that is alleged to have been violated should be broken down into its elements and then each element should be analyzed individually. In sexual assault cases, a quid pro quo and force/coercion/capacity/consent analysis are imperative. When it comes to coercion cases, include an analysis of frequency, duration, intensity, and/or isolation. Follow any decisions stated in your report as the result of your analyses with an explanation or rationale. Conduct a consent analysis for each act, but always bring

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things back to policy. For instance, if there was a power dynamic at play, explain what that dynamic was and why the reporting party reasonably believed that dynamic existed.

There should be a consent analysis conducted for each act as it occurred, understanding that you may need to explain prior patterns of non-verbal consent (although this is not to be conducted with long-term sexual history, which should only be considered in narrow circumstances). There may also be consensual and nonconsensual acts that the parties hadn't considered. For example, an incident may have been preceded by lots of consensual contact (e.g., kissing, touching, removing clothing, etc.), so looking at what cues were given that may or may not have repeated during the nonconsensual contact could be critical to your investigation. Don't gloss over consensual acts, because you may be missing the existence of nonverbal signals that could reasonably have been construed as consent.

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5. HIDING THE REPORT

Share the report with the parties prior to disciplinary action, allowing them the opportunity for appropriate comment. It's ultimately up to you as the investigator whether a party's comments are added to the report, and each party may appeal later if they disagree with a decision not to include comments. Allowing the parties to view and comment on the report before it's finalized, however, offers an opportunity for new information to be discovered that may require further investigation. When a party in an investigation opts to make a comment to your report and you choose to allow the comment, it's advisable to note which party made the comment, and that it was reviewed, discussed, and allowed.

If there is any information you uncovered during the investigation that you choose not to include in the report because it's irrelevant or inappropriate, don't state that you excluded the information when writing your report. That's almost the same as providing the information, and you can't un-ring the bell of knowledge.

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CONCLUSION

Title IX and other Civil Rights Investigators are only human. As such, it can be difficult to put subconscious biases aside that can contribute to faulty decision-making. Investigation reports aren't just an opportunity to explain your findings and rationale, but also to think through how you evaluate evidence presented, the credibility of parties interviewed, and other factors that should go into making a fair decision.

Look at any superfluous details included in your report. Why did you choose to include the adjectives and adverbs found in the report? Are they indicative of personal biases or decisions based on emotion rather than logical reasoning? Ask yourself why you chose to qualify what you said. Process those parts of your report with a fellow investigator or coordinator. Once everything in your report is clearly backed by evidence and logical rationale, your report is ready.

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