



MARCUS WILLIAMS TRAINING ACADEMY

Title IX Training Program



# INVESTIGATORY CONCLUSION - FINDINGS

Lesson 4: Title IX Training Program



## ABOUT ME



### Marcus Williams

President/Subject Matter Expert

- MS in Criminal Justice
- 20 years investigative experience
- NCIS, Brigham Young University, Pentagon (responded to 9/11 attacks)



## POLICY

- Who makes the final decision? Who provides the finding or conclusion?
  - Hearing Official
    - Dean/President
    - Administrator
    - Academic
  - Panel/Board



## TRAIN TO YOUR POLICY

- Provide training to the decision maker:
  - On the investigatory process.
  - The standard of evidence.
  - The policy.
  - Bias.
  - The prohibited behaviors.
- Provide training to all involved.
  - Leadership
  - Administrators
  - HR
  - Legal
  - Employees



## TRUST YOUR POLICY

- Don't make exceptions.
- Don't act in fear of a lawsuit.
- Don't prevaricate because one side hires an attorney or threatens legal action.
- You have trained and prepared your people.



## FINALIZING THE INVESTIGATION

- The finding is based on an evaluation of the evidence.
- The final investigative report should articulate the most accurately available story of what actually happened using all of the evidence collected and available to the investigator.
- The live hearing will present the evidence as well as any new evidence uncovered during cross examination.



## EVIDENCE BASED

- Evidence based is a common theme.
- As you write out your findings, support each assertion with evidence.
- Talk it out. Have someone play the devil's advocate.
- Defend your position.
- Be willing to change if you cannot support your conclusions.





## STANDARD OF EVIDENCE

- Articulate in your policy.
- Train your decision maker.
- Stick to it.
- Preponderance most common = More likely than not.
  - But no longer required.
- Use the language of your policy in the findings report.
- Don't try to mix things up by applying different standards.



## CONCLUSIONS

- Draw conclusions based on evidence supported facts. If you build the case on evidence, your conclusion is supported by evidence.
- Example: You are attempting to show that something (bad) happened based on Brown's reaction right after the alleged event. You have established certain facts:
  - Witness Smith saw Brown running to the bathroom.
  - Brown called Johnson from bathroom (from phone call log).
  - Witness Johnson said she received call and Brown was very upset and reported she was assaulted.
  - Witness Carter heard a woman talking and crying in the bathroom stall.
  - Witness Smith saw Brown's makeup was running and her eyes were puffy when she emerged from the bathroom.



## CONCLUSIONS

- These facts may not prove what happened, but surely support something upsetting happened. Is it more likely than not that Brown was assaulted?



## CONCLUSIONS & INTERPRETATIONS

- Text says, "I'm sorry."
- Complainant claims this is an admission of guilt.
- Respondent claims it was just polite response.
- How do you interpret the text?
  - Look at previous texts.
  - Look at behavior patterns.
  - Look at what respondent was apologizing for.
  - Which explanation is most reasonable?
  - Explain your decision in your report.



## CONCLUSIONS & INTERPRETATIONS

- Using your training and experience.
- If there is behavior that seems atypical - don't ignore it. Address it.
- If you find it reasonable, explain why. Again, it's okay to use your experience, but don't twist or change the facts.
  - Example: Witness says victim was laughing. Would someone who was attacked laugh? While investigator was conducting interview, victim laughed at "inappropriate times." Investigator interviewed witnesses and learned victim laughs whenever she is scared or uncomfortable.



## BUILDING TRAINING & EXPERIENCE

- You have to start somewhere, but don't cite experience that isn't relevant or professional.
- Your personal experience with misconduct or the fact a family member was assaulted, is NOT professional experience.
- Seek out additional training.
- Seek out mentors or coaches.
  - Use their experience as you build your own.





## CONCLUSIONS & INTERPRETATIONS

- Apply your training and experience to their perspective.
- Beware of personalizing conclusions based on your personal experience.
  - "I wouldn't react that way, so therefore it didn't happen."
    - Logical fallacy
  - Instead ask: Why did he react that way? Does that reaction make sense for that person?



## CAN'T DECIDE?

- Talk it out. Write it out.
- Apply the evidence standard.

If you are still stuck at 50%, then it is what it is. Sometimes both explanations are equally reasonable.

- Ask:
  - Does one fact change the entire outcome?
  - Where does this particular fact fit in?
  - Is your finding still supported without this fact?





## CREDIBILITY ASSESSMENT

- As you are formulating your conclusion, remember to use an evidence-based credibility assessment based on relevant facts.
- Credibility may not apply.
- Evidence first.
- Challenge yourself and remember your biases. Are they impacting your decision?



## ARTICULATING YOUR CONCLUSION

- Writing is an excellent way to focus your thoughts.
- You may find you are reaching an unexpected conclusion as you organize and write out your findings.
- Use the definitions in your policy literally.
- Your job is to take a mass of information and focus it into a digestible document that makes sense to your audience.
- Stay focused on the allegations. No tangents!



## DISAGREEMENT

- What if your investigator and decision maker disagree? Or investigator and legal or leadership?
- With the preponderance standard, two reasonable people can look at the same evidence and disagree on the result.
- Allow your policy mandated decision maker the authority to make the decision.
- **Back them up!**



## REVIEW THE FINDING

- You may choose to have general counsel or a supervisor review the report before it is published.
- Decide who and provide training.
- Decide in advance what authority the reviewer has or what their role is.
- Can they change the conclusion?
  - Slippery slope.
  - Should be collaborative.



## GUILTY VS. INNOCENT

- Words matter.
- You are not investigating whether someone is guilty or innocent.
- **You are investigating whether the available evidence supports the allegations to the preponderance standard.**
  - Yes or no.
- Finding or no finding.
- Never say a person was found innocent!



## SUPPORT THE DECISION MAKER

- Do it right and then stand behind the decision.
- No special treatment or allowances for certain people.
- Follow your policy.
- Do not override a subordinate if you disagree.
- Only step in if the decision maker did NOT follow the policy.
- Checks and balances





## CONCLUSION

- Articulate decision maker and process in policy.
- Train all involved in decision/review process.
- Seek training and expertise.
- Use language from policy to support the decision.
- Reasonable people can disagree.
- Trust your process.
- Support your decision maker.
- One party is always going to be unhappy.



## WHAT'S NEXT?



### Marcus Williams Training Academy

- EBook– "Assessing Credibility"
- Lesson Quiz
- YouTube Supplemental Lesson Videos

<https://marcuswilliamstraining.com>

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