

December 31, 2011

President Royce Engstrom
The University of Montana
32 Campus Drive
Missoula, MT 59812

Re: Status Report

Dear President Engstrom:

I regret to inform you that the investigation has not been completed. More investigation is necessary as will be described below. In this investigation, I regarded the confidentiality of University students as a top priority and therefore the team took precautions to protect such confidentiality. Unfortunately, the press had the names of two alleged victims and had contacted one before I began. As a result one victim terminated her relationship with UM personnel blaming the University for violating her privacy. The other victim seems to be reluctant to proceed via the Student Conduct Code process.

My goals in this investigation were simple. What did UM employees, both staff and administration know? When did they know it? What was, has been, or will be done about it? A single instance of rape can create a hostile environment under Title IX. Title IX also prohibits gender based harassment, which may include acts of verbal, non-verbal or physical aggression. Title IX requires the University to take immediate and effective steps to end sexual harassment and sexual violence.

This investigation has revealed that there are many students of interest that need to be questioned under the Student Conduct Code. The team has yet to find any evidence of the date rape drug Rophynol. However, there is evidence of non-consensual sex that is not being reported in the University system. Details of these incidents cannot be disclosed, because of the student confidentiality laws, FERPA, and HIPAA laws, as well as publishing details could compromise the integrity of the ongoing investigation. The investigation will continue to look at patterns of student conduct involving alcohol, illegal use of prescription, and illegal drugs. We need to emphasize that use of alcohol and any drug that results in loss of memory can result in non-consensual sex, which is a crime.

I would like to emphasize that there many programs on campus addressing sexual assault issues, including recent campus communications and posters throughout campus. One female student athlete told me that she felt there are sufficient warnings of date rape and alcohol misuse on campus. Nevertheless, I would recommend creating a UM web site, similar to the web site posted by the Department of Public Safety at Syracuse University.

<http://publicsafety.syr.edu/>.

The University appears to have a gap in reporting sexual assaults. The University is required to take immediate and appropriate action to investigate or otherwise determine what has occurred if it knows or reasonably should know of possible sexual violence. There is evidence that there has been a sexual assault that has not been appropriately reported and investigated.

Guidance from the Office for Civil Rights indicates that typically an investigation takes approximately 60 days to complete, following receipt of a complaint. However, OCR recognizes that the time frame may vary depending upon the complexity of the investigation and the severity and extent of the harassment. The current situation requires a more extensive investigation into possible ongoing sexual harassment as noted above. As a practical matter, this will take longer than 60 days to complete.

Sincerely,

Diane Barz

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