

RESOLUTION AGREEMENT

Among the University of Montana - Missoula,
the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section and
the U.S. Department of Education, Office for Civil Rights

OCR Case No. 10126001
DOJ DJ Number 169-44-9

BACKGROUND AND JURISDICTION

The U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section (“DOJ”), has completed the above-referenced investigation and compliance review of the handling by the University of Montana – Missoula (“University”) of allegations of sexual assault and harassment under Title IX of the Education Amendments of 1972 (“Title IX”) and Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c, et seq. (“Title IV”). The U.S. Department of Education, Office for Civil Rights (“OCR”) has joined DOJ in the Title IX compliance review.¹

Based on DOJ’s investigation and compliance review, DOJ and OCR (jointly referred to as the “United States”) identified concerns regarding the University’s handling of sex-based harassment and its implementation of Title IX’s regulatory requirements. The United States recognizes that, prior to and during the course of the investigation, the University appointed a Title IX Coordinator, adopted policies and procedures regarding sex-based harassment, responded to complaints, and developed and provided training to employees and students. By taking these and other steps to address sex-based harassment, the University has demonstrated its commitment to meeting its obligations under Title IX and Title IV. Through this Resolution Agreement, the University has indicated its willingness to further implement actions that remedy the United States’ concerns identified in the attached Letter of Findings and to ensure the University’s compliance with Title IX and Title IV.

TERMS OF THE AGREEMENT

To resolve the concerns identified in the Letter of Findings, the University will take effective steps designed to: prevent sex-based harassment in its education programs and activities, including clarifying its policies and procedures applicable to various types of sex-based

¹ The Special Litigation Section (SPL) of the Civil Rights Division at the Department of Justice has conducted a related but separate investigation of the University’s Office of Public Safety (OPS) among other law enforcement entities. That investigation’s findings, which are based on independent assessments of compliance with the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d, are set out in a separate report and are not addressed in this letter; however, because OPS is covered by and must comply with the University’s Title IX obligations, OPS is referenced in this letter and required to participate in certain remedies required by the enclosed Agreement, such as training for first responders. To the extent that SPL’s findings regarding OPS under 42 U.S.C. § 14141 and 42 U.S.C. § 3789d also implicate Title IX in ways not addressed by the remedies in this Agreement, those findings will be addressed by any remedies sought from the University by SPL.

harassment; fully investigate conduct that may constitute sex-based harassment; appropriately respond to all conduct that may constitute sex-based harassment; and mitigate the effects of sex-based harassment, including by eliminating any hostile environment that may arise from or contribute to sex-based harassment. The University also will obtain the services of a third-party consultant mutually agreed upon by the parties (the “Equity Consultant”) to consult with the University in its efforts to comply with the terms of this Agreement as outlined below. In turn, OCR will not initiate an enforcement action and DOJ will not initiate litigation regarding the United States’ Title IX and Title IV findings raised as of the date of this Agreement provided the University implements the provisions of this Agreement in good faith and subject to the terms in Section X below.

As used in this Agreement, the term “sex-based harassment” includes both sexual harassment, including but not limited to sexual assault, and gender-based harassment. The term “sexual harassment” means unwelcome conduct of a sexual nature.² The term “gender-based harassment” means non-sexual harassment of a person because of the person’s sex and/or gender, including, but not limited to, harassment based on the person’s nonconformity with gender stereotypes. For purposes of this Agreement, “sex discrimination” includes sex-based harassment, other discrimination on the basis of sex, and retaliation relating to complaints of sex discrimination. The term “employee” means any non-student employee of the University, including but not limited to faculty, administrators, Office of Public Safety (“OPS”) employees, and staff. The term “student employee” means a student who is enrolled at and employed by the University; allegations of sex discrimination against student employees may require the University to take measures applicable to both students and employees. The term “University Court” is the tribunal consisting of students, faculty, and staff that holds hearings regarding alleged violations of the Student Conduct Code (SCC) under certain circumstances prescribed by the SCC.

This Agreement will remain in force for at least three (3) academic years, and will not terminate until at least 60 days after the United States has received all of the reporting required through the first semester of the 2015-2016 school year. The United States will monitor the implementation of the Agreement until it determines that the University has fulfilled the terms of this Agreement and is in compliance with Title IV, Title IX, and the implementing regulations at 28 C.F.R. Part 54 and 34 C.F.R. Part 106, which were at issue in this case.

I. EQUITY CONSULTANT

The University will retain an Equity Consultant with expertise in the area of sex-based harassment prevention and training in higher education to:

- A. Evaluate and recommend revisions to the University’s policies, procedures, and practices for preventing, investigating, and remediating sex-based harassment, as required by Section II.A below;

² Although “sexual assault” is a form of “sexual harassment,” where this Agreement refers to “sexual assault” and “sexual harassment” separately, it is differentiating sexual contact, including intercourse, without consent (“sexual assault”) from unwanted conduct of a sexual nature that does not rise to the level of sexual assault.

- B. Develop and provide the mandatory Title IX training required by Section V.A below; and
- C. Develop one or more annual climate surveys in consultation with the University, as required by Section VIII.B below, and make recommendations to the University regarding its sex-based harassment policies, procedures, and practices based on the surveys.

Within thirty (30) calendar days from the entry date of this Agreement, the University will retain an individual with expertise in the area of sexual assault and harassment prevention and training in the context of higher education who will serve as the Equity Consultant. If the United States objects to any such individuals on the basis of their qualifications, it will let the University know, and the parties will seek a agreement on the Equity Consultant, subject to the enforcement terms in Section X.C. The University will pay all the fees and costs of the Equity Consultant.

II. POLICIES AND PROCEDURES

- A. To clarify, and dispel any confusion about, where and how students should report various types of sex discrimination, by May 30, 2013, the University, in consultation with the Equity Consultant, will draft revisions to its policies and procedures related to sex-based harassment. The University policies and procedures to be revised include, but are not limited to: the Sexual Misconduct, Sexual and Relationship Violence, and Stalking Policy (Policy 406.5); the Sexual Harassment Policy (Policy 406.5.1); the Discrimination Grievance Policy (Policy 407.1); the Discrimination Grievance Procedures; the University's Equal Opportunity Policy/Non-Discrimination Policy (Policy No. 406.4); the Appeals Policy (Policy 203.5.2); and the Student Conduct Code. The University will ensure that these policies and procedures provide an easily accessible and user-friendly system for the prompt and equitable resolution of complaints alleging sex discrimination, use consistently defined terms and reporting options, and include, at a minimum, the following:
 1. accurate definitions of various types of sex discrimination, including sexual harassment and sexual assault that may provide the basis for a complaint pursuant to the University's grievance and other procedures (including but not limited to when off-campus misconduct is covered);
 2. notice to all members of the University community of the grievance procedures that apply to different types of complaints of sex discrimination by employees, students, or third parties;
 3. an explanation of how to file complaints pursuant to the grievance procedures and clarification of other types of complaints that may be filed and with whom those complaints should be filed (e.g., providing more and clearer notice to students of the availability of anonymous reporting and how to report a crime to law enforcement);
 4. the name or title, office address, email address, and telephone number of the individual(s) with whom to file a complaint and those responsible for taking action

on sex discrimination, including investigating complaints of sex-based harassment under the grievance procedures, taking appropriate interim measures during the grievance process, seeking disciplinary action against the accused (where appropriate), and handling appeals;

5. clarification of any differences in the role of the individuals with responsibility to take action on sex discrimination (e.g., if the University continues to have separate policies or grievance procedures for sexual assault and sexual harassment or for employees, it must clarify who receives complaints of sexual assault, sexual harassment, and retaliation, and who receives complaints by students, employees, and student employees);
6. provisions ensuring that individuals who play a role in receiving, investigating, and otherwise processing student complaints of sex-based harassment (including, but not limited, to OPS employees, Title IX coordinator(s), Student Assault Resource Center (SARC) employees, resident assistants, deans, and University Court members) are accessible and do not have any actual or perceived conflicts of interest in the process; in the rare situation that such conflicts arise between the fact-finder or decision-maker and the accused or the accuser in a particular case, the actual or perceived conflict will be disclosed to the parties;
7. a requirement that all employees who are aware of sex-based harassment, except for health-care professionals and any other individuals who are statutorily prohibited from reporting, report it to the Title IX coordinator regardless of whether a formal complaint was filed;
8. procedures for adequate, reliable, prompt, and impartial investigation, hearing (where appropriate), and appeal (where appropriate) of all complaints, including the equal opportunity for the parties to access, review, and present witnesses and other evidence;
9. guidance on interim measures to assist or protect the complaining party during the grievance process, as necessary and with the complainant's consent (e.g., arranging for changes in class schedules and/or living arrangements, counseling, modifying class requirements or testing schedules as needed);
10. reasonable timeframes for individuals to report sex-based harassment and reasonable timeframes for the major stages of the investigation, hearing, and appeal;
11. a requirement for written notification to the parties of the outcome of the investigation, hearing and appeal;
12. a requirement that parties be given notice of the opportunity to appeal the findings;
13. an assurance that the University will keep the complaint and investigation confidential to the extent possible;

14. an assurance that the University will take steps to prevent recurrence of any sex discrimination, with examples of the range of possible disciplinary sanctions, and will remedy the effects of the discrimination on the victim(s) and others, with examples of the types of remedies available to victims; and
15. an explicit prohibition against retaliation that clarifies that allegations of retaliation should be brought to the individual(s) designated to receive such complaints and will be investigated by the University under the same processes and standards outlined in the Title IX grievance procedures.

B. If the University continues to use the Student Conduct Code to investigate or remedy complaints of sex discrimination, the University will draft revisions to the Student Conduct Code that will provide for the same type of prompt and equitable grievance process required by Section II.A above.

C. If the University decides to use the Student Athlete Conduct Code to address allegations of sex discrimination involving student athletes, the University will draft revisions to this Code that will ensure that this part of the grievance procedures is consistent with the prompt and equitable grievance process required by Section II.A above.

D. On or before May 30, 2013, the University will submit proposed revisions to the United States of all of its policies, procedures, and conduct codes related to sex discrimination. If the United States chooses to provide comments on the University's proposed revisions, the University will incorporate the United States' comments unless there is disagreement, in which case the University and the United States will work together in good faith to resolve the disagreement. If the parties are unable to agree on the revisions within 30 days of the United States providing notice of any concerns, the United States may pursue relief under the enforcement provisions of Section X.C below.

E. The University will adopt the revised policies and procedures in Sections II.A-D within fourteen (14) calendar days of approval from the United States. It is the intent of the parties that the revised policies, procedures, and internal guidance be adopted no later than July 15, 2013.

F. Once the University adopts policies and procedures related to sex discrimination pursuant to the terms above, the University will not substantively modify those policies and procedures during the period of the Agreement without the approval of the United States. Such approval will not be unreasonably withheld. All requests to modify such policies and regulations must be made in writing at least thirty days before the University intends to adopt the modification. The United States may reject proposed modifications that are not consistent with the terms of this Agreement or applicable federal laws.

III. NOTICE OF REVISED POLICIES AND PROCEDURES

By the start of the 2013-14 academic year, the University will provide all students and employees with written notice regarding the revised policies prohibiting sex discrimination and the grievance procedures for resolving sex discrimination complaints

the University, OCR may initiate administrative compliance proceedings³ and DOJ may initiate civil enforcement proceedings in federal court.

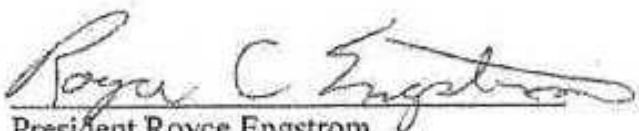
- D. The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this agreement, OCR shall give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.
- E. The University understands that the United States will monitor this Agreement until it determines that the University has fulfilled the terms of this Agreement and is in compliance with Title IV, Title IX, and the implementing regulations at 28 C.F.R. Part 54 and 34 C.F.R. Part 106, which were at issue in this case.
- F. The University further understands that the United States retains the right to evaluate the University's compliance with this Agreement, including the right to conduct site visits, observe trainings, interview University staff and students (including *ex parte* communications with students and employees other than University administrators), and request such additional reports or data as are necessary for the United States to determine whether the University has fulfilled the terms of this Agreement and is in compliance with federal law.
- G. By signing this Agreement, the University agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. To ensure compliance with this Agreement, OCR and DOJ may require additional monitoring reports or the ability to inspect data or other information maintained by the University as determined necessary by OCR and DOJ.

XI. MISCELLANEOUS

- A. This Agreement is for the purpose of resolving a disputed claim and is not, and will not be construed as, an admission of liability, fault, or wrongdoing of any kind by the University.
- B. This Agreement will remain in force for at least three (3) school years, and will not terminate until at least 60 days after the United States has received all reporting required by this Agreement through the first semester of the 2015-2016 school year.
- C. This Agreement shall not bar any individual from pursuing a complaint under Title IX or Title IV against the University.
- D. This Agreement has binding effect on the parties, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, assigns, and legal representatives thereof.

³ OCR may initiate compliance proceedings under 34 C.F.R §§ 100.8-100.12 and 34 C.F.R Part 101.

Signatures of the Parties to the Resolution Agreement



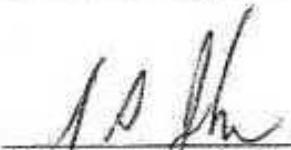
President Royce Engstrom
Office of the President
The University of Montana
Missoula, Montana 59812-3324

Date: May 8, 2013



Anurima Bhargava, Chief
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section

Date: 5/9/2013



Gary Jackson, Regional Director
U.S. Department of Education
Office for Civil Rights
Seattle Office

Date: 5-8-13