

INVESTIGATION REPORT JANUARY 31, 2012

Background of Investigation:

I was retained on December 15, 2011 to assist in the investigation of two separate sexual assault reports occurring in the months of November and December made to a university employee. The investigation was to be conducted under the Title IX guidelines of the U.S. Department of Education Office (OCR) in the “Dear Colleague” letter of June 2011 and the UM Student Conduct Code. I have been assisted by Lucy France, Director of UM’s Equal Opportunity and Affirmative Action Office, and Dr. Charles Couture, UM Dean of Students.

The Student Conduct Code provides for the processing of complaints of sexual harassment and assault, led by the Dean of Students. The Dean of Students, for sexual violence allegations, applies the burden of proof of “preponderance of evidence”¹ as required under Title IX mandates. However, the written Student Conduct Code should be modified to reflect this lower burden of proof for these sorts of violations. If the evidence is sufficient to meet this standard of proof, expulsion can be the sanction imposed. In this investigation, I assumed the process would compare to an “internal audit” on whether OCR guidelines were followed in the reporting of sexual assaults on campus, and ensure that UM adequately addressed particular cases of sexual assault. The expectation that I would come on campus as a “private investigator” like the Kinsey Millhone character in Sue Grafton’s books to solve the crimes of sexual assault has not happened. However, I do pledge and will continue to pledge that I will do everything in my power to ensure that any known perpetrator will be removed from the UM campus and that the entire campus will respond to the President’s objective to make the UM a safe campus immediately.

The reports of sexual assaults on the UM campus now require immediate action and swift compliance with Title IX mandates. Although Title IX is best known for its role in expanding woman’s sports at the high school and collegiate levels, the statute speaks in broad terms that apply to all educational activities.

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²

A rape-tolerant campus with ineffective programming, inadequate support services for victim survivors, and inequitable grievance procedures threatens every student.

“Once a school has notice of possible sexual harassment of students...it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps to end the harassment, prevent its recurrence, and as appropriate, remedy its effects.”³

This is the most difficult part for the UM and other universities because the guidelines are not clear on what constitutes “prompt and effective steps.” The President has already implemented many of the recommendations set out below, and is very receptive to considering new solutions.

Acts of sexual violence are vastly under-reported on college campuses and a victim of sexual assault is likely to suffer from depression, post-traumatic stress disorder, substance abuse, and academic problems.⁴ The OCR has produced numerous documents on training “first responders” how to interact appropriately with a victim. SARC is

¹ Preponderance of evidence is evidence that outweighs the evidence opposed to it.

² 20 U.S.C. § 1681.

³ OCR Policy Guidance (2001) ; DCR letter, April 4, 2011.

⁴ DCR letter: Sexual Violence Background Summary, and Fast Facts, April 4, 2011

the vehicle on the UM campus that leads outreach efforts and assistance about the services available to the students, staff, and faculty populations.

In addition, as the December 31, 2011 report indicated, Guidance from the Office for Civil Rights states 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. Due to the number of incidents added since December, the investigation needs to be ongoing. I would suggest that the investigation go forward without an “outside investigator” and results of the ongoing investigation be reviewed in six months to a year.

Identified Incidents:

1. September 2010: Alleged rape by student against non-student reported to police in December 2011. Charged in Missoula District Court in January 2012. Student Conduct Code applied.
2. October 2010: Alleged rape reported to Dean of Students. Alcohol involved. Conduct Code proceeding initiated but Dean of Students discontinued at victim’s request.
3. February 2011: Alleged rape by student on student. Student Conduct Code proceedings initiated. Alcohol and drugs involved. Alleged perpetrator banned from UM or any affiliate campus. Student Conduct Code proceedings concluded.
4. December 2010: Alleged rape against student by multiple students. Police report filed. No charges brought. Police provided limited information about allegations to University employee. The situation was addressed with the students allegedly involved. UM does not have guidelines and procedures requiring reporting of information of the nature received in the manner this information was received. UM is currently reviewing its guidelines and procedures. The student has just come forward to University (January 2012) Officials and indicated that she wants to proceed with the student conduct code process. Investigation ongoing.
5. 2010 or early 2011: Student allegedly drugged and raped. Did not want to pursue action. Limited information disclosed only for purpose of potentially identifying any pattern. No active investigation.
6. February 2011: Alleged rape of student. Student alleges she was drugged. She does not know the identity of the alleged perpetrator. She contacted the University to report this in January 2012. Student also reported to Missoula City Police in January 2012. The investigation is underway.
7. October 2011: Student date raped on campus. Alcohol involved. Reported to Missoula City Police and to Dean of Students. Student Conduct Code proceedings resulted in expulsion of perpetrator.
8. December 2011: Report to UM employee of possible rape of student off campus by one or more students. Alcohol involved and possible drugs. Victim does not want to pursue. Investigation proceeding with limited information.
9. December 2011: Allegation by student of attempt to rape or sexually assault. Student initially came forward, but has since not returned calls or otherwise cooperated with UM’s investigation into the situation. Student reported to Missoula City Police. The investigation continues with limited information.

On-Campus Resources

The following resources are available to students who are sexual assaulted

- The Student Assault Resource Center (SARC) offers free, confidential, or anonymous support, information, referrals, and advocacy services to victims of sexual assault. SARC is located in the basement at the east entrance of Curry Health Center.
24-hour crisis line: 243-6559
Business line: 243-5244

- Counseling and Psychological Services (CAPS) provides rapid access to individual, group, and couples therapy. In addition, CAPS serves the needs of students in crisis and facilitates off-campus referral when necessary. CAPS is located at the west entrance of the Curry Health Center
24-hour crisis line: 243-4711
- Curry Health Center (CHC) provides medical care. CHC can assist in pregnancy and STD testing following a sexual assault. CHC does not collect evidence in sexual assault cases, but can make referrals for these services.
24-hour crisis line: 243-2122
- Residence Life staff members are trained and knowledgeable about campus services and can help sexual assault victims find assistance. Staff can help victims acquire changes in housing and phone numbers.
Director Sandra Schoonover: 243-2611
- The Dean of Students investigates sexual assaults, at the request of victims, and can impose Student Conduct Code sanctions on student offenders, including suspension or expulsion.
Dean Charles Couture: 243-6413
- Public Safety officers are available 24 hours a day to respond to sexual assaults on campus. Officers will answer questions and explain reporting options, as well as offer access to a SARC advocate or additional resources.
911 or 243-4000, or UM emergency phones

Off-Campus Resources

- St. Patrick's Hospital First STEP doctors and nurses are specially trained to provide complete medical care, evidence collection examinations, information, and referrals in a safe environment.
24-hour crisis line: 329-5635
- YWCA Pathways provides emergency crisis counseling and follow-up advocacy for sexual assault victims. The YWCA also offers support groups for sexual assault victims.
24-hour crisis line: 542-1944 or 800-483-7 858
- Crime Victim Advocates helps sexual assault victims obtain Temporary Orders of Protection (TOP), provides information on Crime Victim's Compensation, and assists sexual assault victims through the judicial system, including checking on the status of individual cases.
Business line: 258-4630
To find out if a TOP has been served: 258-4788
- The Missoula Police Department and the Missoula County Sheriff's Department are responsible for all criminal investigations and can answer questions about the legal process. In cases of sexual assault, officers will ask if the survivors want advocates present to help them understand the proceedings.
Emergency: 911
City business line: 523-4777
County business line: 258-4810

Reporting Options:

1. Missoula Police Department (911 or 406-523-4777)
2. UM Public Safety (406-243-4300)
3. Dean of Students (406-243-6413) is an option for non-criminal reporting
4. Title IX Coordinator/Equal Opportunity Office (406-243-5710) because sexual assault is a form of sexual harassment.
***A victim may talk to any or all of the preceding entities without having to file a report

Overview:

A review of the investigation procedure and process is premature at this time. However, I can comment on the response of the UM administration, staff, and faculty to the December 2011 incident reports that I reviewed.

The response has been prompt and appropriate. The employees immediately went to their supervisors, sought professional counsel on dealing with the victims and reached administration and the President within days. The staff cooperated promptly to all requests and questions. I cannot find any suggestions to improve on what transpired in the reporting of these incidents. The team that has assisted me responded above the call duty during what is normally a Christmas break and spent hours on this investigation in addition to regular duties.

I am disappointed with the lack of response from students with knowledge of house parties where the incidents were alleged to have occurred. Some that have been questioned have not been truthful. I believe "lying" is also covered under the Student Conduct Code.

Conclusions:

1. Victims coming forward in the press have had a positive impact. The UM has a problem of sexual assault on and off campus and needs to take steps to address it to insure the safety of all students as well as faculty, staff and guests.
2. A risk factor of alcohol has been involved in most reports. Alcohol mixed with prescription drugs and possibly illegal drugs has been reported in several incidents. It was reported that drugs legally prescribed to students are traded and mixed with alcohol.
3. The Curry Health Center is a medical facility that protects private medical records. Everyone visiting the Center is guaranteed confidentiality and the right to privacy regarding their medical records. I believe that the standard for the confidentiality of these records under the Montana Constitution is even higher than the HIPPA requirements. Therefore the information that should flow to the University about reports of sexual violence must find another route.

Recommendations:

1. A website redesign is already underway. There are many campuses across the country that have made information and resources on Sexual Assault readily available, including a hotline. The UM site is difficult to navigate in my opinion.
2. Training of the entire University personnel from administrators, to faculty and staff, to coaches, student leaders, residence hall assistants, and volunteers on how to report and respond to sexual assault allegations needs to take place as soon as possible.
3. Make sure that SARC has resources necessary to ensure a prompt response to allegations by victims of sexual assault, long-term counseling for victim survivors, education outreach, and coordination of services to survivors of sexual assault.
4. The policies in place at UM will need to be reexamined to comply with the recent guidelines. For example, the Student Conduct Code on Sexual Harassment needs to be updated to require the standard of proof to be "the preponderance of evidence." This is the standard that is currently applied. However, the written materials should reflect that.
5. The UM should consider taking a more active role in local multidisciplinary agency boards and councils that already exist in this community. This would be one way to look for perpetrators and patterns of abuse throughout the area, while preserving their respective circles of confidentiality.

6. I recommend a mandatory 101 type class for all student athletes and UM freshman on social skills and mores expected to be observed, appropriate sexual relationships and practices, the consequences of risky behavior from alcohol to casual sex, and information on where the resources can be found for mental health, chemical dependency issues, or sexual harassment and assaults.⁵
7. I would encourage any program where third parties are not afraid to report incidents of alcohol, drugs, or sexual harassment. I am hopeful that as students return to campus for Spring Semester, they will come forward with information about private parties attended in during the Fall Semester involving these incidents.
8. Students on campus need to organize their own programs to reach out to students in need of support for better performance in their academic life and improved social life without binge drinking, drugs, and maybe some acceptable social boundaries on casual sex. Peer pressure is the only way some of these risky behaviors will get under control.
9. I recommend a review of UM investigation procedures by an independent, fair, and unbiased task force in another year.

Submitted this 31st day of January 2011

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⁵ Yale Alumni Magazine to have positive intimate relationships without sexual involvement., Jan-Feb 2012. In a recent study, students reported that casual sex has become the social default, although many students do not endorse it. Students expressed a hunger for some direction on what it means to have positive intimate relationships without sexual involvement.