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## CLIENT ADVISORY

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**Education Law Update:  
The United States Department of Justice and the  
United States Department of Education Publishes “Blueprint” for  
Colleges and Universities to Prevent Sexual Assault and Harassment  
and Improve Responses to Reports of Such Misconduct.**

On May 9, 2013, the United States Department of Justice, Civil Rights Division, Educational Opportunities Section (“DOJ”) and the United States Department of Education, through its Office for Civil Rights (“OCR”), issued a letter confirming the resolution of their investigation and compliance review of the University of Montana’s (the “University”) handling of allegations of sexual assault and harassment at its Missoula campus. [Letter Re DOJ Case No. DJ 169-44-9, OCR Case No. 10126001, U.S. Dept. of Justice, U.S. Dept. of Edu. \(May 9, 2013\).](#) Although specific to the University, the Resolution Agreement is intended to “serve as a blueprint for colleges and universities throughout the country” to prevent sexual assault and harassment and improve responses to reports of such misconduct in compliance with Title IV and Title IX. *Id.*

In the fall of 2011 the University received reports that two female students had been sexually assaulted on campus by male students. *Id.* at 2. In an effort to fulfill its Title IX obligation, the University hired former Montana Supreme Court Justice Diane Barz to conduct an independent investigation of these reports. *Id.* While Justice Barz was investigating, the University received seven additional reports of student-on-student sexual assault that had occurred between September of 2010 and December of 2011. *Id.* At the conclusion of her investigation, Justice Barz found that the University “has a problem with 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.” *Id.* After hearing Justice Barz’s comments and recommendations, the University took several “positive steps to address sexual assault and harassment.” *Id.* at 3. At the same time as the University’s investigation and initial reforms, the DOJ conducted a preliminary investigation into the University’s and local law enforcement agencies’ response to sexual assault. *Id.* On May 1, 2012, the DOJ launched a formal investigation under Title IV, and on May 4, 2012, the Assistant Secretary of the Department of Education’s Office for Civil Rights notified the University that the OCR would be opening a Title IX compliance review. *Id.* The United States combined the Title IV investigation and Title IX compliance review. *Id.*

In their letter discussing their conclusions, the DOJ and OCR reiterated that “[s]exual harassment is a form of sex discrimination prohibited by Title IX and Title IV.” *Id.* at 4. The letters define sexual harassment as “unwelcome conduct of a sexual nature,” which “can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.” *Id.* The DOJ and OCR distinguish sexual harassment from a hostile environment, as “‘severe or pervasive’ sexual harassment can establish a hostile environment.” *Id.* at 5.

In the Resolution Agreement, that is to serve as a blueprint, the DOJ and OCR required that the University take the following actions:

- Develop a resource guide on sexual harassment, including sexual assault, to be posted on the University’s website and distributed to students in hard copy and/or electronically upon receipt of complaints of sexual harassment and sexual assault. *Id.* at 29. The guide will contain information on what constitutes sexual harassment and sexual assault, including clear examples of what types of actions may constitute sex discrimination in the University’s programs or activities. *Id.* This information will make clear how to file a Title IX complaint of sexual assault, harassment, or retaliation with the University; the name and contact information for the University’s Title IX Coordinator(s); a description of the Title IX Coordinator’s role; links to the new policies and grievance procedures; and information on what interim measures the University can implement if the alleged perpetrator lives on campus and/or attends classes with the victim. *Id.*
- Develop one or more annual climate surveys, and depending upon the results of the climate surveys, take appropriate action to address climate issues related to sex-based harassment identified through the surveys. *Id.*
- Provide regular mandatory training to students to ensure that: (1) students are aware of the University’s prohibition against sex discrimination; (2) students can recognize such forms of sex discrimination when they occur; and (3) students understand how and with whom to report any incidents of sex discrimination, including the options for filing complaints with the University and with local law enforcement. Also, the sessions will cover an overview of Title IV and Title IX and the University’s Title IV and Title IX policies and procedures. *Id.*
- Coordinate with OPS and local law enforcement. *Id.* at 30.

Further, the Resolution Agreement details specific steps the University must take to be in compliance with Title IV and Title IX. *Id.* Those steps include the following: (1) revising the University’s policies, procedures, and investigative practices to provide a grievance procedure that ensures prompt and equitable resolution of sexual harassment and sexual assault allegations; (2) adequately investigating or responding to allegations of retaliation by students who have alleged sexual assault or sexual harassment; (3) taking sufficient effective action to fully eliminate a hostile environment based on sex, prevent its recurrence, and address its effects; (4) ensuring that the individuals designated to coordinate its Title IX efforts receive adequate training and coordinate these efforts effectively; and (5) revising the University’s notice of nondiscrimination to adequately inform students that sex discrimination is prohibited. *Id.* at 30-31.

In so concluding, the previously mentioned definitions, requirements, and steps issued by the DOJ and OCR on the University in the Resolution Agreement serve as guidelines for to ensure sexual assault and harassment policies comply with Title IV and Title IX. Accordingly, the Resolution Agreement serves as a blueprint for colleges and universities throughout the country. Although, there is discussion that some of the definitions and requirements of this blueprint may violate the First Amendment of the United States Constitution, the blueprint is the government's current view on what universities and colleges need to do to comply with Title IV and Title IX.

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