

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL  
ATTORNEY GENERAL

March 19, 2019

Ms. Dianne Byrum  
Board of Trustees, Chairperson  
Michigan State University  
426 Auditorium Road, Room 450  
East Lansing, MI 48824-1046

*Re: Attorney General's Investigation into Michigan State University*

Dear Ms. Byrum:

As you know, on February 21, 2019, I updated the public on several of the Department's most important investigations, including our investigation into Michigan State University. During that news conference, I discussed a few items that needed to be completed in order to conclude our review. One of those items was my request that former President John Engler be interviewed. This interview is important in several respects. First, as interim President, Mr. Engler was hired to help stem the Nassar fallout. To do this, Mr. Engler publicly indicated that he implemented several policy and staffing changes designed to address previously identified deficiencies. These are relevant issues that fall within the very heart of our review. Second, this office is investigating the concerning allegations that former Trustee George Perles resigned from his position with the Board in exchange for the forgiveness of a debt that he owed. Mr. Engler is a critical witness in that investigation as well.

We sent a letter to former General Counsel Bob Young on January 24, 2019, regarding our request that Mr. Engler be interviewed. In light of his abrupt departure from the University, we also offered to accommodate any logistical concerns that might exist, including traveling to him and conducting the interview at a date and time of his choosing. After originally indicating that the University could not assist with facilitating his interview, we were advised that Mr. Engler would cooperate and we were directed to Mr. Engler's personal attorney, Seth Waxman, for purposes of scheduling.

Unfortunately, our interactions with Mr. Waxman have not been fruitful. Upon contacting Mr. Waxman, we explained that our offer to travel to Mr. Engler was

contingent on Mr. Engler being unavailable to interview in the State of Michigan. Obviously, fairness is a paramount consideration when conducting a criminal investigation and an individual who interviews in another state is subject to different laws and processes for purposes of the interview. For example, the laws in Washington D.C. related to intentionally lying to a police officer in the course of an investigation are not as strong as in Michigan. And, my authority to prosecute a crime that is committed outside of the state is severely limited. Moreover, because this investigation is funded by the taxpayers, we must ensure that we are responsible stewards of the state treasury and are not expending taxpayer funds unnecessarily.

Mr. Engler's attorney advised that he would verify that his client would not be traveling to the state any time in the near future. These conversations took place between February 12<sup>th</sup> and March 18<sup>th</sup>. In fact, one of my attorneys confirmed our concern in writing as recently as March 4<sup>th</sup>.

The interview was scheduled for March 28<sup>th</sup> in Washington D.C. based on our understanding that Mr. Engler would not be back in Michigan any time soon. You can imagine my dismay then when I learned from media reports that Mr. Engler had attended several recent Michigan State basketball games, including the game in East Lansing on March 9<sup>th</sup>.

Mr. Engler's conduct is troubling in several respects. In addition to our concern that Mr. Engler might be attempting to manipulate the forum of his interview to insulate himself from the repercussions of it, I am equally concerned about the message this sends to both the Nassar survivors and the community-at-large. We must lead from the top. The reluctance of the former interim president of the University to cooperatively participate in a law enforcement investigation into the largest sexual assault scandal in the history of higher education – yet happily sit courtside to watch the men's basketball team on multiple occasions – speaks volumes about allegations of a culture of indifference on campus.

I do not know if the University is aware of this behavior, but you certainly have the power to correct it. Section 10(d) of Mr. Engler's employment contract requires that Mr. Engler "respond and provide information" regarding matters within his knowledge even after his employment with the University has concluded. That section also requires that Mr. Engler continue to "provide reasonable assistance to the University" in defense of any claims that may be made against it. Thus, it appears that the University has ample legal authority to not only facilitate our interview with Mr. Engler but to demand that he participate in it. Accordingly, I am requesting that the University act to ensure that Mr. Engler appear in Lansing, Michigan within the next two weeks to be interviewed by investigators from my office.

Second, during my February news conference, I again called upon the University to waive the attorney-client privilege and release the more than 6,000 documents that it has redacted or withheld. I have not received a response to my request. However, it is my understanding that the University is currently deciding whether to initiate yet another internal investigation into this matter.

If true, I'm puzzled by the purpose of this additional investigation. It's been almost two years since the University allegedly hired Patrick Fitzgerald to conduct an internal investigation of the Nassar matter. We have yet to receive any public report of his findings despite the fact that it cost the University millions of dollars to procure. Next, the University requested that my office launch the current investigation. But, after more than a year of time, thousands of hours of work, and hundreds of interviews, our job is still incomplete because the University has failed to deliver on its promise of full cooperation.

It is unclear to me why the University would expend more public funds and, if true, launch yet another investigation if it will continue to withhold information from the public based on the attorney-client privilege. Again, I urge you and your fellow trustees to reconsider your position on waiver of the privilege and refrain from expending additional public funds on yet another investigation if you intend to continue in your refusal to disclose this information publicly. The survivors, the MSU community, and the entire State of Michigan deserve a fair and complete investigation not another unfulfilled promise.

Thank you.

Sincerely,



Dana Nessel  
Attorney General

Cc: Brian Quinn