

**FINAL REPORT FOR THE MICHIGAN STATE  
UNIVERSITY BOARD OF TRUSTEES REGARDING A  
REVIEW OF TITLE IX POLICIES AND PROCEDURES,  
INCLUDING THE DEPARTURE OF SANJAY GUPTA AS  
DEAN OF THE ELI BROAD COLLEGE OF BUSINESS, AND  
POLICY RECOMMENDATIONS ARISING FROM SUCH REVIEW**

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## **I. Introduction And Scope Of Review**

On August 30, 2022, the Board of Trustees (“Board” or “Trustees”) of Michigan State University (“MSU” or “University”) retained Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”) to conduct an internal review of important Title IX-related issues at the University. On March 31, 2023, Quinn Emanuel transmitted its final report (“Report”) to the Board. At the direction of the Board, Quinn Emanuel transmitted its redacted Report for public release.

This Report includes a number of policy recommendations resulting from Quinn Emanuel’s review, including improving coordination between different University administrative units, refining procedural rights, clarifying and/or revising University and employee obligations and applicable policies, aligning investigations with best practices, improving training and expanding resources for the relevant departments.

In preparing this Report and reaching its findings and conclusions, Quinn Emanuel relied upon extensive documentary information the University provided and information University employees provided during voluntary interviews. Because a number of individuals with relevant information declined to be interviewed, this Report does not include their perspectives but is based upon a review and analysis of the relevant information that was made available to Quinn Emanuel. Moreover, the conclusions reached in this Report are Quinn Emanuel’s only and do not represent the views or findings of the Board or the University.

### **A. The Board’s Authority To Commission The Title IX Review**

The Board initiated Quinn Emanuel’s Title IX review under its oversight responsibilities enshrined in Michigan law and its own Bylaws. As the Board detailed in a statement to the University community on October 11, 2022,<sup>1</sup> the Michigan Constitution vests the Board with “general supervision of its institution.”<sup>2</sup> Under the Board’s Bylaws, it “exercises the final authority in the government of the University.”<sup>3</sup> The Board is tasked with ensuring that University employees are treated “in accordance with the law and [the University’s] internal policies and regulations”; the Board is permitted to take “prompt action on urgent . . . personnel matters necessary to the best interests of the University.”<sup>4</sup> Additionally, Paragraph 5 of the Board of Trustees Code of Ethics and Conduct states that the Board will ensure that “the integrity of University business are in place and observed, with periodic auditing by the Office of Audit, Risk and Compliance, reporting directly to the Trustee Committee on Audit, Risk and Compliance”;<sup>5</sup> Paragraph 7 states that the

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<sup>1</sup> MSU Board of Trustees, “Statement regarding ongoing reviews” (Oct. 11, 2022), *available at* <https://trustees.msu.edu/meetings/documents/2022/MSUBoardStatement10.11.22.pdf>.

<sup>2</sup> Const. 1963, Art. VIII, § 5.

<sup>3</sup> Preamble of the Bylaws of the Board of Trustees, *available at* <https://trustees.msu.edu/bylaws-ordinances-policies/bylaws/preamble.html>.

<sup>4</sup> Bylaws of the Board of Trustees, Art. VII, *available at* <https://trustees.msu.edu/bylaws-ordinances-policies/bylaws/article-7.html>.

<sup>5</sup> MSU Board of Trustees Code of Ethics and Conduct, ¶ 5, *available at* <https://trustees.msu.edu/about/code-of-ethics-and-conduct.html>.

Board “will uphold our role as the supervisory and policymaking body of the institution; properly elect, support and evaluate the President...”,<sup>6</sup> Paragraph 8 states that the Board “will support open communication, transparency, and the free expression of ideas and will not condone any form of deceit, incivility, intimation, silencing, or retaliation.”<sup>7</sup> Further, the Board has a codified duty to certify that it has “reviewed all [T]itle IX reports involving the alleged sexual misconduct of an employee of the university.”<sup>8</sup>

As stated in the Board’s Policy Manual,<sup>9</sup> the Board’s Committee on Audit, Risk, and Compliance (“ARC”) provides “oversight for university risk management in order to drive accountability across the entire community.” The ARC “may identify threats and risks that need to be subjected to greater scrutiny,” and it “will review any violations and failures to comply with federal, state, and local laws, rules and regulations, as well as institutional policies.” In exercising its responsibilities, the Board “delegates to the President and, through him or her, to the faculty appropriate authority and jurisdiction over matters for which they are accountable to the Board.”<sup>10</sup> The Board has authority to conduct this and other specified reviews in fulfillment of its fiduciary duties to the University.

## **B. Scope Of The Title IX Review**

The Board authorized Quinn Emanuel to conduct a Title IX Review (“Review”) with four components:

*First*, Quinn Emanuel was asked to assess the policies and procedures of the Office for Civil Rights and Title IX Education and Compliance (“OCR”) and, within OCR, the Office of Institutional Equity (“OIE”), as well as other related University departments and administrative functions, to evaluate progress the University has made with respect to Title IX compliance and the potential need for additional modifications and improvements.

*Second*, Quinn Emanuel was asked to examine the circumstances surrounding the publicized departure of Dr. Sanjay Gupta (“Gupta”) as the dean of the Eli Broad College of Business (the “Broad College”) following an OIE investigation and finding that Gupta failed to report to OIE the alleged sexual misconduct of an individual (the “RVSM Respondent”), who served as a Broad faculty member and administrator, in violation of the University Reporting Protocol on

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<sup>6</sup> *Id.* at ¶ 7.

<sup>7</sup> *Id.* at ¶ 8.

<sup>8</sup> Mich. Comp. L. § 388.1865b(2).

<sup>9</sup> Policy Manual of the MSU Board of Trustees, *available at* <https://trustees.msu.edu/bylaws-ordinances-policies/policies/Policy-Manual-Updated-2019-09-06.pdf>.

<sup>10</sup> MSU Bylaws for Academic Governance, Preamble, *available at* <https://acadgov.msu.edu/bylaws>.

Relationship Violence, Sexual Misconduct, and Stalking (the “Reporting Protocol”).<sup>11</sup> Among other actions, then-Provost and now Interim President Teresa Woodruff (“Woodruff”)<sup>12</sup> asked Gupta for his resignation on August 12, 2022.

Quinn Emanuel assessed: (i) the factual and policy rationales for the personnel actions taken against Gupta, (ii) whether those personnel actions were consistent with applicable policies and procedures, (iii) whether those personnel actions were appropriate under the circumstances, and (iv) broader policy and procedural issues Gupta’s case implicates. Because of the sensitivities and public attention surrounding the removal of Gupta as dean, the Board directed Quinn Emanuel to prioritize the Gupta review, which provides a useful lens through which to evaluate the application of Title IX policies and procedures in a specific context. Quinn Emanuel’s mandate did not include evaluating the underlying investigation of the RVSM Respondent, and therefore the Report makes no findings regarding that investigation.

*Third*, after Quinn Emanuel was retained, the Board asked the firm to provide it with additional guidance regarding the scope of the Trustees’ duty to certify that they have “reviewed all title IX reports involving the alleged sexual misconduct of an employee of the university,” as required by Mich. Comp. L. § 388.1865b(2).

*Finally*, Quinn Emanuel assisted the Board with crisis management and communications strategies, as needed.

### **C. Review Plan**

To achieve its objectives, Quinn Emanuel developed a plan for its Review to:

- Examine the University’s policies and procedures for the Relationship Violence and Sexual Misconduct and Title IX Policy (the “RVSM & Title IX Policy”)<sup>13</sup> and related policies;
- Use the case study of Gupta as a lens through which to examine the procedures and application of relevant policies to a mandatory reporter, including examining:
  - the stated factual and policy bases for the personnel actions taken against Gupta, including the finding that Gupta violated the Reporting Protocol;
  - whether the Administration followed applicable policies and procedures in imposing the personnel actions against Gupta; and

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<sup>11</sup> University Reporting Protocol on Relationship Violence, Sexual Misconduct, and Stalking (effective Aug. 14, 2020), *available at* [https://civilrights.msu.edu/\\_assets/documents/reporting-protocols.pdf](https://civilrights.msu.edu/_assets/documents/reporting-protocols.pdf).

<sup>12</sup> Woodruff was the Provost at the time of Gupta’s departure as dean. On November 4, 2022, she became the Interim President of MSU.

<sup>13</sup> MSU, Relationship Violence and Sexual Misconduct and Title IX Policy (last rev. Jan. 13, 2013), *available at* <https://civilrights.msu.edu/policies/relationship-violence-and-sexual-misconduct-and-title-ix-policy.html>.

- any potential improvements to the policies and procedures to increase accuracy, efficiency and understanding of the policies.

Quinn Emanuel implemented this plan by:

- Interviewing 11 individuals and extending interview requests to 22 additional key personnel who either declined or did not respond to the requests;
- Analyzing over 9,300 documents, including applicable University policies, procedures, and practices (described further below);
- Establishing a dedicated email address to receive incoming information from the University community relevant to the investigation, reviewing the information received, and, in certain cases, conducting interviews; and
- Providing interim presentations to the Board in which Quinn Emanuel advised the Trustees of its initial conclusions and recommendations.

#### **D. Responsibility For Title IX, RVSM, And Reporting Protocol Investigations, Responses, And Personnel Actions**

Quinn Emanuel’s Review included several departments and administrative functions of the University. A helpful organizational chart is available on the University’s website.<sup>14</sup>

OIE is responsible for, *inter alia*, conducting investigations of alleged violations of the RVSM & Title IX Policy and the Reporting Protocol.<sup>15</sup> The RVSM & Title IX policy prohibits (i) sexual harassment; (ii) sexual assault; (iii) relationship violence; (iv) stalking and (v) retaliation. The Reporting Protocol requires University faculty, staff and other designated employees to “promptly report” incidents of prohibited conduct that they “observe or learn about in their professional capacity or in the context of their work and that involve a member of the University community or occurred at a University-sponsored event or on University property.”<sup>16</sup> “Failure to report . . . under the Protocols may result in corrective or disciplinary action, up to and including dismissal.”<sup>17</sup> When OIE makes a finding that a mandatory reporter violated the Reporting Protocol, it typically issues a recommendation regarding potential consequences, but OIE cannot impose consequences,

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<sup>14</sup> MSU Leadership Organizational Chart (effective January 30, 2023), *available at* <https://msu.edu/-/media/assets/msu/docs/org-charts/msu-org-chart-2023-01-25.pdf?rev=078f00a923c944cc8fe115ee506b51aa&hash=A36211081AFB0D595B6D69AF34A85AA4>.

<sup>15</sup> According to data shared with the Board during a Board meeting on September 8, 2022, OIE received 1,375 reports of alleged violations and conducted 59 investigations during the 2021-2022 academic year. The 1,375 reports consist of alleged violations of MSU’s RVSM & Title IX Policy, MSU’s Anti-Discrimination Policy, or both.

<sup>16</sup> University Reporting Protocol on Relationship Violence, Sexual Misconduct, and Stalking (effective Aug. 14, 2020), *available at* [https://civilrights.msu.edu/\\_assets/documents/reporting-protocols.pdf](https://civilrights.msu.edu/_assets/documents/reporting-protocols.pdf).

<sup>17</sup> *Id.*



discipline, or personnel actions on University employees and faculty members. The Title IX Coordinator, OCR, and OIE all report directly to the University President.

The Provost also reports directly to the University President. The Office of Faculty and Academic Staff Affairs (“FASA”) operates under the Provost’s authority and is tasked with administering academic human resources policies to recruit and retain an internationally competitive faculty and academic staff at the University. The Provost’s Office, FASA, and University department leadership, including unit administrators, frequently participate in deciding whether to impose personnel action and what action to impose.

The Office of General Counsel (“OGC”), which reports to the University President, provides legal advice and representation to the University through its President, Board of Trustees, and administration.

## **II. Executive Summary**

This Report sets forth Quinn Emanuel’s analysis of factual records and information obtained during interviews, application of policies and procedures, and policy recommendations based on the areas of review the Board requested.

### **A. Gupta Case Study**

On August 12, 2022, Woodruff met with Gupta and took three personnel actions against him: (i) requested his resignation as dean of the Broad College; (ii) returned him to faculty without an endowed chair position; and (iii) required him to complete additional training.

#### **1. Gupta’s Alleged Leadership Failures**

In her August 18 Letter to the Board of Trustees, Woodruff provided five primary reasons for these personnel actions, which she characterized as leadership failures:

1. Gupta violated the Reporting Protocol;
2. Gupta failed to investigate the RVSM Respondent’s alleged misconduct;
3. Gupta caused a two-month delay in interim actions by not reporting the RVSM Respondent’s alleged misconduct to FASA;
4. Gupta failed to notify FASA of the RVSM Respondent’s misconduct in conjunction with the RVSM Respondent’s leave to retirement request; and
5. Gupta failed to prevent the RVSM Respondent’s violation of the Outside Work for Pay Policy (“OWP Policy”).

Quinn Emanuel reviewed the available evidence supporting the five alleged leadership failures, and concluded that only one of the rationales—the Reporting Protocol violation—is supported by the factual record and applicable policies. Specifically, this Report concludes:

- Given the totality of the circumstances, Gupta violated the Reporting Protocol in failing to report to OIE what he knew regarding the RVSM Respondent’s alleged misconduct,

but Quinn Emanuel reaches that conclusion based on facts and analysis that differ in material ways from Woodruff's August 18 Letter (*see* Section IV.B.1);

- Gupta was prohibited from investigating the RVSM Respondent's alleged misconduct under the Reporting Protocol and therefore he complied with the Reporting Protocol by not asking the RVSM Respondent any follow-up questions (*see* Section IV.B.2);
- Gupta was not obligated to report the allegations against the RVSM Respondent to FASA. Pursuant to a written University policy, that reporting obligation was OIE's, and it thus appears that the two-month delay in implementing interim measures that Woodruff cited is primarily attributable to OIE's delay in notifying FASA to start that process, not Gupta's (*see* Section IV.B.3);
- There is no indication Gupta knew about the RVSM Respondent's May 10, 2022 request for leave to retirement at the time it was made or that his approval was sought or required under applicable policies. Thus, he did not violate any University policy by not notifying FASA of the allegations against the RVSM Respondent in connection with the leave to retirement request (*see* Section IV.B.4);
- While Gupta may have exercised insufficient oversight of OWP requests, which he delegated to an administrator, there is insufficient basis to hold him responsible for the RVSM Respondent's failure to comply with the OWP Policy in June 2022 because there is no evidence that Gupta knew about the RVSM Respondent's violation until FASA discovered the faculty member was giving two lectures at another university before the effective date of the RVSM Respondent's resignation (*see* Section IV.B.5).

With respect to these five alleged leadership failures, where the Administration's personnel actions were inconsistent with the written policies, the Administration argued that Gupta had higher responsibilities as a dean, and that his failure to act in accordance with those higher duties constituted leadership failures. However, while Woodruff had the authority to remove Gupta as dean for any lawful reason, including loss of confidence, the Reporting Protocol does not place greater expectations on certain mandatory reporters, such as deans, than on others. Moreover, requiring Gupta to take actions that the policies either forbid (i.e. asking follow-up questions to the RVSM Respondent), expressly delegate to another entity (OIE), or do not require his approval as dean (leave for retirement), appears unfair and could create confusion within the University leadership as to which expectations to follow.

## 2. Woodruff's Personnel Actions Against Gupta

Quinn Emanuel also reviewed the resulting personnel actions taken against Gupta, including the required authority and procedures required for each action. Based on the information available to Quinn Emanuel, it reached the following conclusions:

1. **Deanship.** There are disputes of fact as to whether Gupta voluntarily resigned or was asked to resign on August 12, 2022, but Quinn Emanuel, on balance, believes that

Gupta initially agreed to resign upon Woodruff's request during his meeting with her and later sought to rescind his resignation (*see* Section V.A);

Gupta was an at-will dean based on his dean contract and MSU's Bylaws for Academic Governance, and could be removed from his deanship at any time and for any legal reason. Both then-President Stanley and then-Provost Woodruff's participation was required for Gupta's removal or forced resignation. The University's Bylaws for Academic Governance give the president the sole authority to remove a dean upon the recommendation of the provost, and Gupta's dean contract provided that he could be removed only by the president and the provost. Based on information provided to Quinn Emanuel by members of the Administration, Woodruff appears to have consulted with Stanley several times about the decision, and Stanley made a statement expressing his support. However, Stanley declined an interview, and thus Quinn Emanuel cannot verify whether and to what extent Stanley participated in the decision. Woodruff's stated position during her interview—that she had the unilateral right to remove Gupta—is inconsistent with the Bylaws and Gupta's offer letter (*see* Section V.A);

2. **Endowed Chair.** Gupta was returned to the faculty without an endowed professorship, which is inconsistent with the terms of his dean contract. The Administration cited the University's Policy on the Revocation of Honors and Awards (the "Revocation Policy") in support of its decision to return Gupta to the faculty without an endowed chair without further processes or procedures, but that policy was approved in 2021—six years after Gupta's dean contract was executed. Gupta's contract was not amended to incorporate that policy, and it does not seem to apply to Gupta's circumstances by its terms. Further, interviews revealed that the Administration relied on factual errors in concluding that the Revocation Policy applied. At the same time, the Administration did not appear to consider the applicability of another policy—the Policy on Discipline and Dismissal of Tenured Faculty (the "Discipline Policy")—which grants procedural safeguards and rights to faculty members who have achieved tenure and are facing major or minor discipline. Although the Administration believes the Discipline Policy is inapplicable to Gupta in his at-will dean capacity, and Woodrow stated that she could unilaterally take any actions against Gupta in his administrative role provided it did not affect tenure, the terms of the Discipline Policy and University bylaws do not appear to support such a distinction (*see* Section V.B); and
3. **Mandatory Training.** When the University chooses to take personnel actions in response to OIE findings of mandatory reporting failures, it frequently imposes verbal counseling or mandatory training as a consequence, and OIE often recommends mandatory training. Here, the Administration required Gupta to undergo additional Title IX and RVSM training. The Discipline Policy identifies "mandatory training" as a "type" of "minor discipline" and sets forth procedural requirements for such "disciplinary action." As discussed below, the Discipline Policy likely should have applied to the imposition of mandatory training on Gupta but as with the denial of the endowed chair, it appears that the Administration did not consider the applicability of

these procedural safeguards in requiring Gupta to complete additional training (*see* Section V.C).

In addition to these findings, Quinn Emanuel considered broader lessons that could be drawn from the Gupta case study regarding the University's handling of RVSM and Title IX investigations, including by comparing it to other representative cases. Among other issues, Quinn Emanuel considered the sequencing of mandatory reporting failure cases in connection with the associated investigations, as well as the independence of OIE<sup>1</sup> from other administrative units. In particular, Quinn Emanuel learned that despite a 2015 decision giving OIE independence from other University departments,<sup>18</sup> OGC and FASA became involved in OIE's reconsideration of its initial decision to close its investigation into the RVSM Respondent's case. This intervention occurred soon after Woodruff's personnel actions against Gupta that FASA recommended, raising unanswered questions as to the reasons for OGC and FASA's involvement (*see* Section VI.A).

In sum, in light of Quinn Emanuel's analysis of the available evidentiary record and policies, the personnel actions taken against Gupta appear disproportionate, out of sequence with the underlying investigation, and based on a factual record that included errors and omissions of relevant information and context. Moreover, some of these issues raise broader concerns about the Title IX investigative process itself, as well as the underlying policies under which MSU is operating (*see* Section VI.B).

## **B. General RVSM And Title IX Policy Recommendations**

Quinn Emanuel was asked to review the University's policies and procedures, and to propose policy recommendations to achieve better outcomes and implement best practices for RVSM and Title IX investigations. The firm primarily gained insights into the University's RVSM and Title IX policies and procedures by using Gupta's investigation as a case study. To promote clarity, efficiency, and equitable enforcement of its policies and procedures, Quinn Emanuel recommends that the University consider implementing a number of policy changes, including the following:

1. Refining the notice requirement and coordination between OIE and FASA for reports of RVSM and Title IX violations by MSU employees by requiring OIE to notify FASA and unit leadership within three business days of receiving a report against an employee, considering whether there are any instances where faculty members or administrators should report RVSM or Title IX violations to FASA directly, and requiring OIE to notify FASA and unit leadership of reports involving a claimant in their unit (*see* Section VII.A);

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<sup>18</sup> MSU OGC indicated that the policy of OIE independence was undertaken as a result of the "Dear Colleague" letter from Assistant Secretary for Civil Rights Catherine Lhamon, U.S. Department of Education, dated April 24, 2015. *See* Office of Civil Rights, U.S. Dep't of Educ., "Dear Colleague Letter" (Apr. 24, 2015), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>.

2. Adding standard of proof, notice, and grievance requirements for investigations into violations of the Reporting Protocol, giving alleged violators of the Reporting Protocol the same procedural rights as alleged violators of Title IX including grievance and appeal rights (*see* Section VII.B);
3. Refining the scope of and certain terms in the Reporting Protocol, including:
  - Defining the requirement of “prompt” reporting to necessitate reporting within 72 hours of learning of or observing a violation of the RVSM & Title IX Policy;
  - Evaluating how far out the duty to report information that has already been reported (or is learned about third-hand or beyond) is required;
  - Clarifying whether senior administrators should be held to a different standard under the Reporting Protocol than other mandatory reporters; and
  - Adding language to encourage witnesses to cooperate with investigations to enable outcomes based on full information (*see* Section VII.C);
4. Refining the training materials for the RVSM & Title IX Policy and the Reporting Protocol to ensure that instructions are clear and consistent, include more practical examples of prohibited conduct, and tailor refresher trainings based on the nature of the violation committed (*see* Section VII.D);
5. Setting standards and guidelines for OIE’s interview reports and memoranda of findings regarding alleged violations of the Reporting Protocol (*see* Section VII.E). Example template forms that can be utilized are included in Attachment A;
6. Sequencing investigations of alleged violations of the Reporting Protocol to follow the underlying investigations of alleged RVSM and/or Title IX violations, as this will better promote consistent and equitable enforcement of the Reporting Protocol and any resulting personnel actions (*see* Section VII.F);
7. Establishing factors for determining the discipline, if any, that violators of the Reporting Protocol should receive, such as intent, motive, previous violations of the Reporting Protocol, history of reporting alleged violations of the RVSM & Title IX Policy, and University position (if the University decides to impose heightened reporting requirements on leaders). Such factors will help to avoid inconsistency in personnel actions resulting from violations (*see* Section VII.G);
8. Clarifying the scope of the policy on Revocation of Honors and Awards by delineating criteria to be used in assessing the nature and severity of an offense and/or give examples of violations that would be sufficiently severe to warrant the revocation of an honor or award, defining what an “adjudicat[ion] and confirm[ation]” of misconduct means under the policy, and stating who has authority to revoke an honor or award (*see* Section VII.H);
9. Clarifying the scope of the Discipline and Dismissal of Tenured Faculty for Cause Policy to either expressly state that it applies to deans and other administrators who

are also tenured faculty members, or to clarify that they are not entitled to such procedural safeguards (*see* Section VII.I);

10. Implementing a policy to govern alcohol consumption at off-campus events MSU sponsors, which will involve weighing the advantages and disadvantages of a policy that limits alcohol consumption versus a policy that outright prohibits it (*see* Section VII.J);
11. Implementing a policy requiring at least two mandatory reporter employees to stay for the entire duration of events MSU sponsors in order to promote student safety and increase the likelihood that any violations of the RVSM & Title IX policy that may occur are witnessed and reported by mandatory reporters (*see* Section VII.K);
12. Implementing a policy to require communication to other universities/employers about former MSU employees' RVSM or Title IX violations, to promote safety of those not just within MSU's community, but also outside of it and to avoid a "pass the harasser" syndrome (*see* Section VII.L);
13. Expanding the resources for OCR, to, among other things, enable OIE to efficiently process the high volume of reports that it receives, assign two investigators to each investigative interview in line with best practices, allow interviewees to review their interview write-ups for accuracy, and field questions about the scope of mandatory reporting requirements. Relatedly, the University should consider steps to ensure that OIE's resources are focused on investigating issues that fall within OIE's purview, not other offices' purviews (*see* Section VII.M); and
14. Improving the Title IX certification process, as discussed below (*see also* Section VII.N).

### **C. Board Of Trustees Certification Review**

Quinn Emanuel also reviewed the Board's Title IX certification process. Pursuant to Mich. Comp. L. § 388.1865b(2), the Trustees are required to certify that they have "reviewed all [T]itle IX reports involving the alleged sexual misconduct of an employee of the university" on an annual basis. According to a November 2, 2022 report by Honigman LLP,<sup>19</sup> in June 2022, Trustees raised specific concerns regarding the University's Title IX certification process. In response to those concerns, in July 2022, the University's Office of Audit, Risk, and Compliance began conducting an audit of the Title IX certification process. On August 12, 2022, that Office concluded that the certification process contained deficiencies. On August 22, 2022, the Board retained Honigman to conduct an investigation into whether the University properly certified pursuant to Section 265b of MCL §388.1865b. In its report, Honigman concluded, among other things, that "although the

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<sup>19</sup> *See* MSU Trustees, "Honigman Report of Investigation" (Nov. 2, 2022), *available at* <https://trustees.msu.edu/meetings/documents/2022/BOT%20Statement%20and%20Honigman%20Report%2011.4.22.pdf>.

University failed to properly certify in 2021, the Board of Trustees took proactive steps in 2022 to ensure the President and at least one Board member had reviewed each 2021 Title IX report.”

As part of its efforts to properly certify on a going-forward basis, the Board asked Quinn Emanuel for guidance related to its review of Title IX reports. From its discussion with the Board as well as its review of Honigman’s report and several sample Title IX reports that the Trustees shared and/or had concerns about, Quinn Emanuel recommends several improvements to the Trustees’ certification process, including:

- Adding deadlines for the submission of Title IX reports to Trustees for review;
- Using a standardized format for the reports to be prepared to mitigate the risk that key information will be included in some but not all reports;
- Using a checklist for Trustees to evaluate the reports;
- Creating a formal process for Trustees to ask any questions to OIE about the reports including whether referrals to other departments were, in fact, made where referenced; and
- Providing training to the Trustees on how to review the reports (*see* Section VII.N).

Quinn Emanuel has included in this Report an example checklist template that can be utilized by Trustees in reviewing Title IX reports for the certification process.

### **III. Methodology And Limitations**

Controversy surrounding Gupta’s removal has led to significant media attention regarding the personnel actions taken against him, the underlying allegations involving the RVSM Respondent, and the resulting Board decision to commission a review. From the outset, the Board’s decision to commission a review provoked critical letters from the President and Provost, a vote of no confidence in the Board from the Faculty Senate, letters from alumni and students both in support of and in opposition to the Board’s action, and several statements from the Board and its members. As detailed below, this contentious environment may have deterred certain interviewees from agreeing to participate in interviews. This lack of cooperation impeded a full assessment of the strengths and weaknesses of the stated rationales for the Administration’s actions.

After the Board retained Quinn Emanuel on August 30, 2022, then-President Stanley issued the following statement in response:

Gupta served in his role as dean at the will of the Provost and she was well within her rights to make this leadership transition. I fully support this decision and the process utilized to come to this action. The administration will cooperate with the outside counsel.<sup>20</sup>

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<sup>20</sup> MSU Office of the President, “President responds to Trustees’ decision to review personnel decision” (Aug. 30, 2022), *available at* [https://president.msu.edu/communications/messages-statements/2022\\_statements/2022-08-30-President-responds-to-Trustees-decision.html](https://president.msu.edu/communications/messages-statements/2022_statements/2022-08-30-President-responds-to-Trustees-decision.html).

Quinn Emanuel requested, and the University provided, over 9,300 documents from University repositories, employees' email accounts, and other sources that contained potentially relevant information or that included particular keyword terms. These documents included:

- The complete OIE file on the allegations against the RVSM Respondent;
- The complete OIE file on Gupta's violation of the Reporting Protocol;
- The OIE file of Employee #1 whom OIE found to have violated the Reporting Protocol by failing to report information regarding the RVSM Respondent's behavior at the Gala;
- Memoranda the Provost's Office and FASA issued regarding the personnel actions against Gupta;
- The Reporting Protocol, RVSM & Title IX Policy, and related policies;
- Policy documents related to faculty disciplinary investigations and processes;
- RVSM & Title IX Policy and Reporting Protocol training materials;
- E-mail files for the period from March 15, 2022, through September 14, 2022, from fourteen document custodians containing key terms;
- OIE reports and memoranda regarding mandatory reporting failure cases from 2018–2022 and an Excel spreadsheet listing any discipline imposed by the applicable administrator in each case;<sup>21</sup> and
- Documents provided by certain interviewees, including documents from Gupta's attorney, who provided excerpts from Gupta's calendar, certain travel documents, documents regarding Gupta's endowed chair, and information regarding a prior RVSM investigation where Gupta supported a claimant.

Quinn Emanuel also obtained and reviewed publicly available relevant documents, such as a November 2, 2022 report by Honigman, LLP; a June 2017 report by Jones Day; MSU's September 1, 2020 Report of Employee Review (related to failures of former senior leaders including to report sexual misconduct of a former MSU dean); and the Ropes & Gray Report of the Independent Investigation (related to Larry Nassar), which are described further below as relevant.<sup>22</sup>

Based on its review of documents, Quinn Emanuel identified certain individuals who likely had relevant information. On October 3, 2022, Quinn Emanuel emailed its first set of interview requests to five key witnesses. Quinn Emanuel did not communicate to any current or former MSU employee that they were required to participate in the review at any point.

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<sup>21</sup> Quinn Emanuel was provided these reports and memoranda with the titles of these respondents included, but with the names of the respondents and other individuals redacted.

<sup>22</sup> During his interview, Gupta raised that two other deans may have been treated differently for similar violations. Quinn Emanuel requested access to files regarding these two deans. Quinn Emanuel and the Board were informed that neither dean had faced allegations of a mandatory reporting failure and neither dean had been the subject of an adverse finding by OIE. The Board thus directed Quinn Emanuel not to further investigate any allegations, grievances, or complaints against these two deans.



On October 4, 2022, in response to the interview requests, the MSU Faculty Senate sent a letter to the Board, asking the Board to “cease this investigation” and indicating that a vote of no confidence in the Board was scheduled at the upcoming Faculty Senate and University Council meetings. The letter was publicly released and is available on the internet.<sup>23</sup>

On October 5, 2022, also in response to the interview requests, Woodruff sent a letter to the Board of Trustees asking the Board to “halt the manner of your investigation,” asserting that Gupta’s failure to comply with mandatory reporting obligations was “not in dispute” and that the individuals Quinn Emanuel contacted “would have limited knowledge on the matter.” Woodruff instructed the Board: “do not send inquiries of a legal matter directly to members of campus” and called the interview requests “aggressive and unparalleled actions.” Woodruff’s letter was also publicly released and is available on the internet.<sup>24</sup>

Later on October 5, 2022, Stanley sent a letter to the Board indicating that he shared Woodruff’s concerns regarding the Quinn Emanuel review of “the personnel action surrounding former Broad College Dean Dr. Sanjay Gupta.” Stanley stated that his administration was “cooperating with the law firm” and added:

But it is also my duty to ensure that employees are protected from undue pressure and that the Title IX and OIE investigations still underway are not influenced. Please be advised that MSU employees will not be compelled to participate in Quinn Emmanuel’s review, and for those who do voluntarily participate, the university will offer legal counsel to those employees.

Stanley’s letter was also publicly released and is available on the internet.<sup>25</sup>

After receipt of those letters, Quinn Emanuel was asked to arrange interviews through the University. Two exceptions are Gupta and the RVSM Respondent, whom Quinn Emanuel was authorized to contact directly regarding the interview requests.<sup>26</sup>

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<sup>23</sup> See *WLNS6 News*, “Stanley, others ask for halt of Board’s investigation into former MSU business dean” (Oct. 5, 2022), available at <https://www.wlns.com/news/michigan/stanley-others-ask-for-halt-of-msu-business-school-dean-investigation-from-board/>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> At the request of the Board’s point person for this engagement in the fall of 2022 who is no longer on the Board, Quinn Emanuel also directly contacted two additional individuals to request an interview. One accepted the request, and one declined.

Quinn Emanuel conducted voluntary interviews of 11 key individuals, including Gupta, Woodruff, and other MSU employees,<sup>27</sup> including individuals who contacted an email address the firm set up.<sup>28</sup>

Twenty-two (22) additional MSU current or former employees or community members either expressly declined or never responded to Quinn Emanuel's requests for interviews. These individuals included, among others, Broad Administrator #1, Broad Administrator #2, the RVSM Respondent, and members of FASA. Additionally, no employees of OIE agreed to a live interview.<sup>29</sup>

A core recommendation of the Report is that, although Title IX does not require the University to compel participation with investigations,<sup>30</sup> the University should strengthen its statements regarding cooperation with such investigations, as some other university statements provide. Nonetheless, despite these limitations, the findings contained in this Report represent a fair, objective, and comprehensive analysis of the available facts. Moreover, the extensive contemporaneous documentation that Quinn Emanuel reviewed provided important insights, even into the actions of some of those individuals who declined to be interviewed.

Quinn Emanuel was instructed to not investigate the facts concerning the underlying RVSM/Title IX alleged sexual misconduct investigation involving the RVSM Respondent. Accordingly, Quinn Emanuel makes no assessment of those facts, and this Report discusses such facts only as relevant context to the personnel actions taken against Gupta.

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<sup>27</sup> Attachment B is a statement of one interviewee who asked that this statement be included in any report as a condition of his participation in an interview with Quinn Emanuel.

<sup>28</sup> Quinn Emanuel communicated directly with five individuals who reached out to Quinn Emanuel through the dedicated email address set up to receive information from the University community relevant to the review.

<sup>29</sup> Although OIE Employee #2 declined to be interviewed, OIE Employee #2 agreed to provide written answers in response to select questions. Most of these responses were non-substantive or deflected to other parts of the University. For example, Quinn Emanuel asked these questions: "In your view, what are the primary factors that increase OIE's workload? Is the volume of reports of misconduct a primary factor?" In response, OIE Employee #2's counsel stated: "[This question] seeks information related to OIE's workload. [This question] is more appropriately directed to MSU Administration and/or OIE's leadership. [OIE Employee #2] performs [OIE Employee #2's] duties as they are assigned to [OIE Employee #2] by others."

<sup>30</sup> See U.S. Dep't of Educ., Office for Civil Rights, "Questions and Answers on the Title IX Regulations on Sexual Harassment," *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf> ("[W]itnesses are not required to submit to cross-examination or otherwise participate in the Title IX grievance process.") (citing 34 C.F.R. § 106.45(b)(6)(i)).

#### **IV. Analysis Regarding Stated Reasons For Personnel Actions Against Gupta**

Quinn Emanuel’s findings regarding the stated factual and policy rationales for personnel actions taken with respect to Gupta are described below.

##### **A. Timeline Of Key Events**

The following timeline highlights key events in the Gupta case study related to Gupta’s alleged leadership failures, the underlying RVSM investigation, other OIE reports and investigations of mandatory reporting failures associated with the underlying RVSM case, and the personnel actions imposed against Gupta.

<b>Date</b>	<b>Event</b>
<b>May 5, 2015</b>	Gupta receives offer letter to become dean of the Broad College
<b>June 16, 2020</b>	Gupta is reappointed dean of the Broad College
<b>September 2, 2021</b>	Gupta completes online training regarding the Reporting Protocol
<b>March 2022</b>	The RVSM Respondent notifies Gupta and Broad Administrator #3 that the RVSM Respondent is planning to resign from MSU and teach at another university, effective June 30, 2022
<b>April 22, 2022</b>	Student MBA Association holds University-sponsored Gatsby Gala (the “Gala”) at an off-campus location
<b>April 24, 2022</b>	OIE receives first report of the RVSM Respondent’s alleged misconduct from an anonymous student
<b>April 25, 2022</b>	OIE receives a second report of the RVSM Respondent’s alleged misconduct from a faculty/staff member who learned about the alleged misconduct from a student
<b>April 26, 2022</b>	OIE receives reports of RVSM Respondent’s alleged misconduct from two students
<b>April 26-29, 2022</b> (exact date unknown)	Broad Administrator #1, who learned about the RVSM Respondent’s conduct from Broad Administrator #2, who learned about it from a student, informs Gupta that a “faculty member” was intoxicated and danced inappropriately at the Gala

Date	Event
<b>April 27-30, 2022</b> <sup>31</sup> (exact date unknown)	Broad Administrator #2 informs Gupta about the RVSM Respondent’s alleged misconduct, including dancing suggestively and being turned away from students as the RVSM Respondent approached them
<b>April 27, 2022</b>	OIE receives two reports of the RVSM Respondent’s alleged misconduct (i) from a faculty member, who relayed information from a student, and (ii) from the same student directly
<b>April 28, 2022</b>	OIE receives another student report of the RVSM Respondent’s alleged misconduct
<b>April 29, 2022</b>	Final day of classes for Spring Semester
<b>April 29, 2022</b>	OIE receives reports from Broad Administrators #1 and #2 of the RVSM Respondent’s alleged misconduct
<b>May 3, 2022</b> <sup>32</sup>	The RVSM Respondent informs Gupta during a scheduled meeting that the Respondent “drank too much” at the Gala and was “very sorry”
<b>May 4, 2022</b>	The RVSM Respondent resigns, effective June 30, 2022
<b>May 5, 2022</b>	OIE receives report of RVSM Respondent’s alleged misconduct from a faculty member, who heard from a student who may have witnessed the conduct
<b>May 6, 2022</b>	Final day of exams for Spring Semester

<sup>31</sup> Gupta appears to have spoken with Broad Administrator #1 sometime between April 26-29, 2022, and with Broad Administrator #2 sometime between April 27-30, 2022; however, the exact date of these conversations is unclear. During his interview, Gupta recalled that he spoke to Broad Administrator #1 in an airport around April 26, 2022, and that he spoke to Broad Administrator #2 approximately one day later. Travel reimbursement documents confirm that Gupta was at an airport on April 26, 2022. OIE’s memorandum reflects that Broad Administrators #1 and #2 each told OIE that when they spoke to Gupta, they said that reports would be filed, suggesting they had not yet filed reports when they spoke with Gupta. OIE’s records state that Broad Administrators #1 and #2 filed reports on April 29, 2022. However, Broad Administrator #1’s report to OIE indicates that he learned about the RVSM Respondent’s behavior on April 29, 2022, suggesting that he spoke with Gupta on that day and that Gupta called Broad Administrator #2 the day after (April 30, 2022).

<sup>32</sup> During his interview, Gupta recalled that the RVSM Respondent made the disclosure to Gupta during a regularly scheduled meeting around May 3, 2022. Gupta’s calendar entries reflect that he had a one-on-one meeting with the RVSM Respondent on May 3, 2022.

Date	Event
<b>May 8, 2022</b>	Commencement
<b>May 10, 2022</b>	Broad Administrator #3 sends the RVSM Respondent's leave to retirement request to FASA, which was approved. The RVSM Respondent's alleged misconduct is not referenced
<b>June 16, 2022</b>	OIE sends an email to FASA and Gupta, informing them of allegations against the RVSM Respondent: "OIE received information that unidentified students may have experienced sexual harassment and/or nonconsensual sexual contact from [the RVSM Respondent] [Faculty] in violation of the RVSM. OIE typically will not send the unit notification in RVSM cases until a formal complaint is signed, but OIE has determined to send an early notification in this case based on health and safety"
<b>June 20, 2022</b>	FASA Administrator, Gupta, Senior Administrator #1, and three other individuals meet to discuss interim measures for the RVSM Respondent. During that meeting, Gupta discloses knowledge of allegations against the RVSM Respondent
<b>June 20, 2022</b>	Gupta emails the RVSM Respondent, telling the RVSM Respondent to have only remote contact with students
<b>June 21, 2022</b>	FASA Administrator emails Gupta about the RVSM Respondent's outside work for pay at an outside university ("University #1"); Gupta responds with Broad Administrator #3's understanding that the outside work for pay form was not required; FASA Administrator disagreed, and Gupta requests the form and forwards the form to FASA Administrator
<b>June 22, 2022</b>	FASA Administrator emails OIE that Gupta disclosed knowledge of the RVSM Respondent's alleged misconduct
<b>June 22, 2022</b>	OIE interviews Gupta to get "pertinent information" for investigation of the RVSM Respondent
<b>June 23, 2022</b>	OIE opens mandatory reporting failure investigation into Gupta
<b>June 29, 2022</b>	Senior Administrator #1 emails the RVSM Respondent, stating that the RVSM Respondent's leave to retirement is revoked and the RVSM Respondent's outside work for pay at University #1 was not permitted because the RVSM Respondent did not obtain permission

Date	Event
<b>June 30, 2022</b>	The RVSM Respondent resigns from MSU, effective immediately
<b>June 30, 2022</b>	OIE interviews Broad Administrator #2
<b>July 6, 2022</b>	OIE interviews Broad Administrator #1
<b>July 28, 2022</b>	OIE issues a formal complaint against the RVSM Respondent
<b>August 2, 2022</b>	OIE issues memorandum finding Gupta committed a mandatory reporting failure because he failed to report information he learned from Broad Administrators #1 and #2, as well as information he learned from the RVSM Respondent directly
<b>August 8, 2022</b>	FASA Administrator issues memorandum to Woodruff recommending Gupta’s removal from the deanship
<b>August 10, 2022</b>	OIE decides to dismiss the formal complaint against the RVSM Respondent for lack of participation by any claimant or the RVSM Respondent
<b>August 11, 2022</b>	According to Gupta, he speaks with Broad Administrators #1 and #2, both of whom purportedly confirm that they did not tell him the RVSM Respondent’s alleged conduct was sexual misconduct
<b>August 12, 2022</b>	Gupta meets with Woodruff, and Senior Administrator #2 is present. Woodruff asks Gupta to resign due to the OIE finding of a mandatory reporting failure and several alleged leadership failures. <sup>33</sup> In addition to his removal as dean, Gupta is returned to the faculty without an endowed chair and is required to complete additional training
<b>August 15, 2022</b>	OIE completes a draft Notice of Dismissal of investigation of the RVSM Respondent
<b>August 17, 2022</b>	The Board asks Woodruff for “additional information concerning the Gupta case,” including “the timeline regarding who knew what and when and who reported what and when”

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<sup>33</sup> There is a dispute as to whether Gupta’s resignation was voluntary or involuntarily, as discussed in Section V.A.2 below.

Date	Event
<b>August 18, 2022</b>	Woodruff sends the Board a letter (the “August 18 Letter”) stating five reasons for the personnel actions taken against Gupta
<b>August 19, 2022</b>	OIE finalizes its notice of dismissal of the investigation into the RVSM Respondent and sends it to FASA and OGC
<b>August 22, 2022</b>	FASA meets with OIE and asks them not to close the RVSM Respondent’s investigation
<b>August 22, 2022</b>	Board retains Honigman LLP for Title IX certification review
<b>August 25, 2022</b>	FASA asks OIE not to send the Notice of Dismissal to the Broad College, and indicates OGC wants to review it before it is sent out
<b>August 25, 2022</b>	At meeting with OIE and OGC, OGC says RVSM case should not be closed, and OIE agrees to keep open
<b>August 30, 2022</b>	Board retains Quinn Emanuel
<b>August 30, 2022</b>	Former President Samuel Stanley issues a statement that the administration “will cooperate with the outside counsel”
<b>September 6, 2022</b>	OIE interviews an individual (Employee #1) about a potential mandatory reporting failure related to the RVSM Respondent’s case
<b>September 14, 2022</b>	OIE generates Evidence Packet for the RVSM Respondent’s case
<b>September 19, 2022</b>	OIE issues mandatory reporting failure finding against Employee #1 for failure to report the RVSM Respondent’s alleged misconduct
<b>September 19, 2022</b>	Another employee (“Employee #2”) reports the RVSM Respondent’s alleged misconduct
<b>September 19, 2022</b>	Another employee (“Employee #3”) reports the RVSM Respondent’s alleged misconduct
<b>September 21, 2022</b>	OIE receives another report from Broad Administrator #2 related to the RVSM Respondent’s alleged misconduct
<b>October 3, 2022</b>	Quinn Emanuel requests interviews with five MSU employees
<b>October 4, 2022</b>	Faculty Senate leadership writes to the Board and asks it to cease and desist from the Quinn Emanuel review

Date	Event
<b>October 5, 2022</b>	Woodruff writes letter to Board asking it to “halt the manner of your investigation” by Quinn Emanuel
<b>October 5, 2022</b>	Stanley writes letter to Board Chair, stating that MSU employees would “not be compelled to participate in Quinn Emmanuel’s review, and for those who do voluntarily participate, the university will offer legal counsel to those employees”
<b>October 11, 2022</b>	Stanley announces his resignation, citing loss of confidence in the Board
<b>October 17, 2022</b>	RVSM Respondent Investigation report is distributed to parties
<b>October 28, 2022</b>	RVSM Respondent’s OIE Hearing Case File is completed
<b>November 14, 2022</b>	RVSM Respondent’s OIE Hearing, where neither (unidentified) claimants nor the RVSM Respondent participate
<b>December 5, 2022</b>	The resolution officer issues decision in the RVSM Respondent’s case, finding non-consensual sexual contact with two unidentified student claimants and sexual harassment with one such student
<b>February 10, 2023</b>	Board asks Quinn Emanuel to deliver a full report of its findings and recommendations
<b>February 24, 2023</b>	Gupta files a lawsuit against Woodruff and six other current or former MSU employees in their personal and official capacities

**B. Factual Analysis Of Alleged Leadership Failures**

**1. Reason #1: Mandatory Reporting Failure**

**Summary: Given the totality of the facts and circumstances, Gupta violated the Reporting Protocol in failing to report to OIE what he knew regarding the RVSM Respondent’s alleged misconduct, but Quinn Emanuel reaches that conclusion based on facts and analysis that differ in some material ways from Woodruff’s August 18 Letter.**



a. Applicable Policy And Relevant Facts

i. *The Reporting Protocol*

As indicated above, the Reporting Protocol provides that mandatory reporters must “promptly report incidents of relationship violence, sexual misconduct, and stalking” that “[t]hey observe or learn about in their working or professional capacity” and “[i]nvolve a member of the University community or which occurred at a University-sponsored event or on University property.” Reportable conduct is “[a]ll conduct listed as prohibited conduct in the RVSM & Title IX Policy,” which includes, as relevant here:

- Title IX and the RVSM both prohibit sexual harassment, which Title IX defines as conduct that is “severe, pervasive, and objectively offensive” and the RVSM defines as conduct that is “severe, persistent, or pervasive.”
- The RVSM prohibits non-consensual sexual contact, which is broadly defined as the “intentional touching of intimate body parts of another person in a sexual manner without consent.” Intimate body parts are defined as including “the mouth, neck, buttocks, anus, groin, genitalia, or breast” but the policy provides that “sexual contact can occur with any part of the body.”
- Title IX prohibits fondling.
- Neither policy prohibits excessive drinking.

The Reporting Protocol does not provide any limitation to the reporting requirement. It does not, for example, indicate that mandatory reporters do not need to report information if they believe it has already been reported by someone else or if they hear about it from someone who was not a direct witness or participant. Nor does it place a higher obligation on some mandatory reporters to report violations than others.

ii. *Gala Incident And Resulting OIE Investigation*

The Gala, which MSU sponsored, was held on April 22, 2022, at an off-campus site, and Gupta did not attend. OIE received its first report of the RVSM Respondent’s alleged misconduct on April 24, 2022. As explained below, it appears that Gupta most likely learned information about the RVSM Respondent’s alleged misconduct first from Broad Administrator #1 between April 26-29, 2022, and Gupta then called Broad Administrator #2 to discuss the alleged misconduct between April 27-30, 2022.

Subsequently, during a regularly scheduled monthly meeting with the RVSM Respondent on May 3, 2022, or May 4, 2022, it is undisputed that the RVSM Respondent told Gupta that the RVSM Respondent was intoxicated at the Gala and that the RVSM Respondent was “very sorry” for the RVSM Respondent’s behavior.

As described further below, there are several different accounts of what specific information Gupta learned about the RVSM Respondent’s conduct and whether he believed that he needed to report

this information to OIE. However, there is no dispute that Gupta did not disclose the information that he learned about the RVSM Respondent's alleged misconduct to OIE before June 22, 2022.<sup>34</sup>

OIE opened an investigation into Gupta's alleged violation of the Reporting Protocol following a June 20, 2022 meeting FASA organized with Gupta and several other individuals to discuss whether and what interim measures should be imposed to address the RVSM Respondent's alleged misconduct. During that meeting, Gupta revealed that he knew about (some of) the RVSM Respondent's alleged misconduct before receiving the June 16, 2022 email from OIE.

On June 22, 2022, FASA Administrator emailed an OIE employee ("OIE Employee #1"), relaying that Gupta said he had previously learned of the RVSM Respondent's alleged misconduct but had not reported it to OIE. OIE Employee #2 interviewed Gupta on June 22, 2022, where he told OIE what he knew about the RVSM Respondent's alleged misconduct at the Gala.

OIE issued a memorandum finding that Gupta violated the Reporting Protocol on August 2, 2022. FASA also conducted a leadership review, resulting in a memorandum issued on August 8, 2022, which attached a FASA case management document describing additional information about Gupta's mandatory reporting failure. Outlined below are the key findings from OIE's investigation and FASA's case management document relating to the finding that Gupta violated the Reporting Protocol.

### iii. *OIE's Investigation*

After FASA's email to OIE on June 22, 2022, OIE Employee #2 emailed Gupta on that same day. OIE Employee #2 wrote:

It is my understanding you would like to report information you have in reference to the . . . case involving faculty Respondent, [the RVSM Respondent].

At this time we have not initiated a formal investigation and are in the initial assessment phase. Unfortunately, we have very limited information about what took place as the conduct was largely submitted [b]y anonymous sources. We would like to gather additional information.

Gupta promptly responded and agreed to be interviewed that day. OIE Employee #2 and Gupta spoke by phone that afternoon, which was memorialized in an OIE "record of contact." No other OIE investigator or other personnel participated in the call. Although OIE Employee #2's June 22 email to Gupta had stated that OIE Employee #2 understood Gupta wanted to "report information" about the RVSM Respondent's case and that OIE wanted to "gather additional information" about

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<sup>34</sup> There is also no dispute that, as a "person[] employed by the University as executive management, faculty, [or] academic staff" whose position is not included in the Reporting Protocol's list of exempted mandatory reporters, Gupta was a mandatory reporter as defined by the Reporting Protocol when he learned of the RVSM Respondent's misconduct. According to OIE's investigative memorandum, prior to this OIE investigation, Gupta had most recently completed training on the Reporting Protocols on September 2, 2021.

the RVSM Respondent’s case, OIE did not document Gupta’s interview in the underlying RVSM Respondent’s case file, and the record of contact expressly states that the meeting with Gupta “was not an investigative interview for associated case.”

The record of contact includes the following recitation of Gupta’s explanation:

Gupta reported to OIE that [the RVSM] Respondent had approached him after the MBA Gala even[t] in April/May and stated [the RVSM Respondent] was “very sorry” [the RVSM Respondent] had too much to drink at the gala and something happened that should not have. Gupta stated the employee did not provide further details at that time and he did not ask for details.

...

[Broad Administrators #1 and #2] notified [Gupta] that they had reported the behavior to OIE, that several students had come to them to report the employee and that they were “taking care of it”. The staff stated students reported [the RVSM Respondent] had gotten drunk and “misbehaved”. Gupta stated as he did not receive any RVSM/Title IX information he did not feel the need to report. He further felt any reporting obligations had been fulfilled by the other staff members. Gupta acknowledged he knew it took place at the end of the year party and that is why he did not ask further questions. His staff stated they would follow up with him at a later date.

. . . Gupta stated [that Broad Administrator #2] . . . would be the person with the most information and has been in direct contact with the students. . . .

According to the record of contact, Gupta stated that the RVSM Respondent had submitted retirement paperwork “a few weeks prior to the reported conduct.”

On June 23, 2022, OIE Employee #1 forwarded FASA Administrator’s June 22 email to an “Office of Institutional Equity” email address, stating: “Please enter as a MRF [mandatory reporting failure] and assign to [OIE Employee #2].”

OIE Employee #2 then interviewed Broad Administrator #2 and Broad Administrator #1 about Gupta’s alleged mandatory reporting failure, on June 30, 2022, and approximately July 6, 2022, respectively.<sup>35</sup> On August 2, 2022, OIE issued a memorandum finding that Gupta had committed a mandatory reporting failure. According to OIE’s investigative memorandum, OIE first learned

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<sup>35</sup> OIE’s investigative memorandum states that Broad Administrator #1’s interview occurred on June 30, 2022. This appears to be an error. OIE’s record of contact for Broad Administrator #1 reflects that OIE interviewed Broad Administrator #1 on July 7, 2022. An email that OIE sent to Broad Administrator #1 on July 7, 2022, indicates that OIE interviewed Broad Administrator #1 on July 5, 2022. As a result, Quinn Emanuel concludes that the interview occurred around July 6, 2022.

about the RVSM Respondent's behavior on April 23, 2022. OIE initiated a formal investigation into the RVSM Respondent's behavior on July 28, 2022.

The memorandum states that Gupta revealed at the June 20, 2022 meeting on interim measures that "[the RVSM Respondent] had spoken to him about the event." "Specifically, it was reported that [the RVSM Respondent] had notified Gupta that [the RVSM Respondent] had overdrank and had acted inappropriately. He further revealed [sic] he may have 'pertinent' information to share with OIE about the conduct."

In the memorandum, OIE summarizes the June 22, 2022 interview with Gupta, which, as described above, was prompted by OIE Employee #2's understanding that Gupta had information to report regarding the RVSM Respondent. Although the interview was presented to Gupta as an opportunity for him to report information to OIE about the RVSM Respondent's conduct, OIE did not file the information in the RVSM Respondent's case file, and instead concluded that, "[d]espite receiving this information [from the RVSM Respondent,] no complaint was made by Gupta to OIE at any time."

The OIE memorandum, which repeats some of the information contained in the record of contact, stated:

OIE met with Gupta via telephone on June 22, 2022. Gupta was advised he was being contacted for information involving a potential mandatory reporting failure. OIE advised Gupta he was not obligated or required to speak with OIE and that information shared would not be confidential.

Gupta reported [the RVSM Respondent] had approached him after the MBA Gala event and stated [the RVSM Respondent] was "very sorry" for [the RVSM Respondent's] behavior at the event. Specifically, that [the RVSM Respondent] had drank too much and "something happened that should not have." Gupta recalled [the RVSM Respondent] did not provide any further details at that time, nor did he ask for additional information.

[Broad Administrator #1] . . . , and [Broad Administrator #2] . . . also approached Gupta following the event. Gupta recalled they did not witness the reported conduct, but it was reported by several students that [the RVSM Respondent] had behaved in a way that was "inappropriate". Gupta recalled [Broad Administrators #1 and #2] were "taking care of it" and would update him with additional information as they receive it.

Gupta stated [Broad Administrator #2 and Broad Administrator #1] only indicated students reported [the RVSM Respondent] being drunk and "misbehaving", but no further details were provided. As he did not have reason to believe "misbehaving"

or “inappropriate behavior” was sexual in nature, Gupta did not believe there was an obligation to report.<sup>36</sup>

The memorandum also describes OIE’s June 30, 2022 telephone interview with Broad Administrator #2. As discussed further below, the OIE memorandum does not clearly delineate whether Broad Administrator #2 described the RVSM Respondent’s alleged misconduct to OIE or whether Broad Administrator #2 also provided Gupta with the same description. The clearest statement that the OIE memorandum makes regarding what Broad Administrator #2 is said to have reported to Gupta is as follows:

[Broad Administrator #2] noted although [Broad Administrator #2] reported the sexualized behavior to Gupta, they spent most of their time discussing alcohol on site, and the potential intoxication level of [the RVSM Respondent] at the time of the reported conduct . . . [Broad Administrator #2] stated [Broad Administrator #2] made it clear to Gupta [the RVSM Respondent’s] behavior was sexual in nature and that subsequent OIE reports would be filed.

With respect to Broad Administrator #1, OIE’s investigative memorandum states that Broad Administrator #1 told OIE Employee #2 during Broad Administrator #1’s interview that “[Broad Administrator #1] could not say definitively that [Broad Administrator #1] used [the RVSM Respondent’s] name when [Broad Administrator #1] reported to Gupta. However, [Broad Administrator #1] reported to [Gupta] there was inappropriate behaviors [sic] by a ‘faculty member’. Specifically, that the faculty member [was] dancing inappropriately and said behavior would be reported to OIE.”

In other words, it appears that Broad Administrator #1 told OIE that very limited information had been shared with Gupta in their conversation—omitting the identity of the RVSM Respondent and omitting the nature of the “inappropriate behaviors.” However, the OIE memorandum nevertheless concludes that “two” Broad administrators—presumably referring to Broad Administrators #1 and #2—“reported the behavior in which [the RVSM Respondent] engaged in was *sexual in nature* and that [the RVSM Respondent] may have inappropriately touched a student or students.” (emphasis added). The OIE memorandum does not state the specific dates of Gupta’s conversations with Broad Administrator #1, Broad Administrator #2, and the RVSM Respondent, but the memorandum presents the conversations in the following order: the RVSM Respondent, Broad Administrator #2, and Broad Administrator #1. The August 2, 2022 OIE memorandum recommended Gupta complete additional training.

As discussed further below, on August 10, 2022, OIE had internal discussions regarding the planned dismissal of the RVSM Respondent’s investigation because OIE had been unable to identify a claimant and the University no longer employed the RVSM Respondent. After OIE provided notice of that plan, OGC and FASA intervened, asking OIE to keep the investigation

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<sup>36</sup> Internal footnotes have been omitted from this block quotation. The OIE memorandum omits information from the record of contact of OIE’s June 22, 2022 interview of Gupta, namely that Gupta stated that Broad Administrators #1 and #2 told him that they “had reported the behavior to OIE.”

open on August 22, 2022, and August 25, 2022, respectively. The OIE investigation into the RVSM Respondent concluded with a decision from the hearing officer issued December 5, 2022, finding that the RVSM Respondent had violated the RVSM & Title IX Policy. The OIE investigative file and hearing record for the RVSM Respondent's case did not include any mention of Gupta's June 22, 2022 interview with OIE or the content of Gupta's disclosure.

iv. *FASA's Case Management Document*

The FASA case management document states that sometime between April 22 and 29, 2022, “[the RVSM Respondent] informed Dean Gupta that [the RVSM Respondent] became intoxicated and behaved inappropriately, without going into detail, and apologized” and that “[Broad Administrator #1] and [Broad Administrator #2] reported to Dean Gupta that students reported to [Broad Administrator #2] that [the RVSM Respondent] appeared intoxicated and was ‘dancing suggestively with students and may have touched one of them.’” Like the OIE memorandum, the FASA case management document discusses Gupta's conversation with the RVSM Respondent before it discusses Gupta's conversations with Broad Administrators #1 and #2.

The FASA case management document also states that during the meeting held on June 20, 2022, Gupta “indicated that the week following the incident, [the RVSM Respondent] went to him and admitted that [the RVSM Respondent] had been intoxicated and inappropriate, and apologized. Dean Gupta also stated that during that week, other faculty and students told him information that was consistent with the OIE report, including the sexually inappropriate behavior.” Further, the FASA case management document states that during the June 20, 2022 meeting, Gupta “was informed that he should have contacted FASA and OIE at that time, which he acknowledged.”

The FASA case management document thus adds two allegations that were not stated in the OIE memorandum: (i) that students directly told Gupta about the RVSM Respondent's sexually inappropriate behavior; and (ii) that Gupta acknowledged that he should have contacted FASA and OIE to report information about the RVSM Respondent.

b. Administration's Position

According to the Administration, Gupta was required to report to OIE what he learned about the RVSM Respondent's conduct at the Gala because: (i) the conduct that he learned about constituted clearly reportable conduct under the RVSM & Title IX Policy; (ii) the Reporting Protocol is unambiguous and does not exempt mandatory reporters from filing duplicative reports when another report has already been filed; and (iii) as a dean, Gupta was expected to exercise better judgment and had a leadership obligation to report the information that he learned about the RVSM Respondent's alleged misconduct to both OIE and FASA.

During her interview with Quinn Emanuel, Woodruff reported that she believed Gupta was the first person to hear about the RVSM Respondent's conduct and that Gupta heard it directly from the RVSM Respondent, meaning that Gupta had received “primary information that no one else at this moment [did].”<sup>37</sup> She expressed her belief that Broad Administrators #1 and #2 learned about

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<sup>37</sup> Gupta does not appear to have been the only person to have spoken with the RVSM Respondent directly. Another employee told Quinn Emanuel that the employee also discussed the RVSM

the RVSM Respondent's conduct from Gupta, making Broad Administrator #1's and Broad Administrator #2's information third- or fourth-hand and "downstream" from the information Gupta's received.

When asked about the information that Broad Administrator #2 relayed to Gupta about the RVSM Respondent's alleged misconduct during her interview, Woodruff initially stated that she believed the information included the RVSM Respondent's alleged "touching" and "grinding" on individuals. However, later in the same interview Woodruff clarified that the allegation of "grinding" was from the underlying case against the RVSM Respondent, and that the OIE memorandum instead described that Broad Administrator #2 told Gupta that the RVSM Respondent had danced "suggestively" at the Gala. Woodruff explained her view that "suggestive" dancing is a "euphemism" that refers to sexual behavior and that Gupta should have reported suggestive dancing or inappropriate dancing pursuant to the Reporting Protocol.

Woodruff also initially stated during her interview that during her August 12, 2022 meeting with Gupta, he stated that students also reported to him about the RVSM Respondent's alleged misconduct. However, later in the interview, Woodruff stated that she "made a mistake" and did not hear directly from Gupta that students reported to him and, instead, must have relied on FASA's case management document, which asserts that Gupta made such a statement during the June 20, 2022 meeting, which she did not personally attend.

Senior Administrator #1 was the only participant in the June 20, 2022 meeting other than Gupta who agreed to an interview with Quinn Emanuel. As to Gupta's alleged admission during the June 20 meeting—referenced in the FASA case management document—that Gupta should have contacted FASA and OIE, Senior Administrator #1 did not support that Gupta had admitted responsibility. Rather, Senior Administrator #1 said that Gupta stated he did not think he had to report because all the RVSM Respondent said was that the RVSM Respondent got drunk and regretted it. As to whether Gupta said during the June 20 meeting that students told Gupta about the RVSM Respondent, Senior Administrator #1 said FASA Administrator was not aware of any students who reported to Gupta. Senior Administrator #1 said that he heard that allegation—that Gupta heard from faculty, staff, *and* students—but did not know the source.

In her August 18 Letter to the Board, Woodruff stated that during her August 12 meeting with Gupta, he told her that when the RVSM Respondent spoke with him, Gupta told the RVSM Respondent, "I must let you go," but that Gupta ultimately did not do so because he thought that the RVSM Respondent was resigning from MSU.

During her interview, Woodruff shared her belief that Gupta was motivated to intentionally cover up the RVSM Respondent's misconduct because it reflected poorly on Gupta, who had given the RVSM Respondent an administrative position.

Woodruff also stated that she was not aware of any other individuals who were investigated or found to have violated the Reporting Protocol in relation to the RVSM Respondent's case.

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Respondent's drunkenness at the Gala with the RVSM Respondent and did not report this information to OIE.

Similarly, she said that she did not know any details about Gupta's prior track record with OIE or RVSM issues, and did not consider his track record in her decision-making.

Woodruff stated that in evaluating Gupta's actions, her "primary goal" was "zero tolerance." She also stated that young women should be able to attend celebratory events without being harmed at MSU, and that the perpetrators should not be able to go to other institutions and repeat the behavior that MSU knew about. When asked whether the RVSM Respondent's new employer had been notified of the results of the investigation into the RVSM Respondent's conduct, Woodruff answered that to her knowledge, the employer had not been notified. She further stated that MSU does not have a formal "pass the harasser" policy, and that "we are working on that policy."

c. Gupta's Position

According to Gupta, he was not required to report the information he learned about the RVSM Respondent's conduct at the Gala because: (i) no one used the word "sexual" when sharing information about the RVSM Respondent's alleged misconduct, and thus Gupta did not understand the conduct to be prohibited by the RVSM & Title IX Policy; (ii) the information he learned from Broad Administrator #1 and Broad Administrator #2 was fourth- and third-hand information, respectively; (iii) Broad Administrators #1 and #2 were already filing reports, and Gupta was not required to file a duplicate report; (iv) Gupta did not learn any new information from the RVSM Respondent and believed that the RVSM Respondent was only talking about excessive drinking when the RVSM Respondent apologized for the RVSM Respondent's behavior; and (v) Gupta's experience with prior OIE cases informed his view that violations had to be severe, persistent, or pervasive to constitute a violation of the RVSM & Title IX Policy, and he did not believe the information he learned about the RVSM Respondent's conduct met this standard.

During his interview with Quinn Emanuel, Gupta stated that he believes the following occurred:

- Around April 26, 2022, Broad Administrator #1 called Gupta while Gupta was at the airport and told Gupta that a "faculty member" (Broad Administrator #1 did not use the Respondent's name) was "inappropriately dancing" at the Gala and that reports would be made to OIE;
- Around April 27, 2022, Broad Administrator #2 told Gupta that the RVSM Respondent was "dancing suggestively" at the Gala and was approaching students to dance and being turned away. Gupta said that Broad Administrator #2 "may have" used the word "grinding" to describe the RVSM Respondent's dancing, but that would not have meant anything to Gupta because he did not know what the word meant,<sup>38</sup> and that reports would be made to OIE; and
- Around May 3, 2022, during a regularly scheduled meeting between Gupta and the RVSM Respondent, the RVSM Respondent told Gupta that the RVSM Respondent "drank too

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<sup>38</sup> According to OIE's final investigative report in the RVSM Respondent's case, "[g]rinding is a term used to describe a close partner dance in which the individuals rub their bodies against each other in a sexually suggestive manner."



much” at the Gala and that the RVSM Respondent was “very sorry” for the RVSM Respondent’s behavior.

When asked why Broad Administrators #1 and #2 felt it necessary to file reports with OIE if they did not describe the dancing as “sexual,” Gupta stated that he thought they were filing reports just to play it “safe,” and he did not think that their reporting to OIE was a reflection of the sexual nature of the conduct.

Gupta also stated that when the RVSM Respondent apologized for the RVSM Respondent’s behavior, Gupta did not ask the RVSM Respondent any follow-up questions due to the Reporting Protocol’s prohibition against mandatory reporters conducting investigations into alleged misconduct (this prohibition is discussed further below). Gupta denied that any students ever reported to him, denied that anyone reported to him that the RVSM Respondent touched any students, denied the description in the OIE Report that the RVSM Respondent told him that “something happened that should not have,” and denied that he ever told anyone in the June 22 FASA meeting or otherwise that he should have reported the alleged misconduct.

Gupta also stated that he did not view the RVSM Respondent’s statements to him as new information: “[the RVSM Respondent] told me about [the RVSM Respondent’s] intoxication, which is what [Broad Administrators #1 and #2] told me. [The RVSM Respondent] didn’t share anything else but [the RVSM Respondent] was ‘very sorry.’ . . . [The RVSM Respondent] wasn’t telling me anything not already reported.”

Gupta and his lawyer have pointed to an internal investigation Jones Day conducted in 2017 of the MSU football staff. In the report, Jones Day did not fault certain staff for not filing duplicative reports. That report concluded that certain staff members learned of a potential incident of alleged misconduct after the football coach had reported the incident to OIE, they did not learn any details about the incident, and they knew only that a report had been made and that an investigation was underway. According to the report, “[h]aving no details, and understanding that MSU PD was already investigating the incident, these staff members did not make a duplicative report to OIE or MSU PD. There is no evidence that these members of the football staff intentionally impeded, obstructed, or interfered in OIE’s investigation into the alleged sexual assault.”<sup>39</sup>

In his interview, Gupta stated that when he received OIE’s email on June 22, 2022, he believed that OIE was requesting to speak with him about *a* mandatory reporting failure, not *his* mandatory reporting failure.

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<sup>39</sup> Jones Day, Report of Independent Investigative Counsel Regarding the Michigan State University Football Program’s Response to Incidents of Alleged Sexual Violence (June 2017), at p.10, *available* *at* [https://media.clickondetroit.com/document\\_dev/2017/06/05/Jones%20Day%20report%20MSU\\_9904330\\_ver1.0.PDF](https://media.clickondetroit.com/document_dev/2017/06/05/Jones%20Day%20report%20MSU_9904330_ver1.0.PDF).

d. Quinn Emanuel's Assessment

In considering the factual record, Quinn Emanuel's assessment is that Gupta should have reported the RVSM Respondent's alleged conduct to OIE.<sup>40</sup>

i. *On Balance, Gupta Should Have Reported To OIE What He Learned From Broad Administrators #1 And #2*

The Reporting Protocol refers readers to the RVSM & Title IX Policy for a full list of prohibited conduct that must be reported, including non-consensual sexual contact, as defined above. It also offers the following "brief description" of "sexual misconduct" that must be reported:

Unwelcome sexual advances, unwelcome requests for sexual favors or other unwelcome behavior of a sexual nature that is severe, persistent or pervasive (sexual harassment); a physical sexual act perpetrated without consent (may be categorized as sexual contact, sexual assault, or rape); taking or attempting to take non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited (sexual exploitation); incest; or statutory rape.

There is no dispute that Broad Administrator #1, Broad Administrator #2, and the RVSM Respondent made disclosures to Gupta. There is a dispute, however, as to whether any students made reports to Gupta. Based on the available evidence, it appears unlikely that students reported the RVSM Respondent's alleged misconduct to Gupta. The FASA case management document states that during the June 20, 2022 meeting, Gupta stated that students also made reports to him about the RVSM Respondent's alleged misconduct. Gupta denies that any students reported to him. Notably, OIE's investigative memorandum which states that OIE "reviewed all the collected information" does not state that any students reported to Gupta.<sup>41</sup>

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<sup>40</sup> As discussed below, Gupta was not obligated to report to FASA.

<sup>41</sup> Quinn Emanuel's written questions to OIE Employee #2 included the following questions: "Did you investigate or ask Dr. Gupta about whether any students reported [the RVSM Respondent's] conduct to him? Did your investigation find evidence that any students reported to Dr. Gupta? If yes, what evidence did you find?" OIE Employee #2's response, sent through counsel, does not directly answer these questions: "[These questions] ask[] whether any students reported [the RVSM Respondent's] conduct to Dr. Gupta. OIE's Mandatory Reporting Failure Investigative Memorandum details the activities performed by [OIE Employee #2] in relation to the Gupta investigation." Further, only one attendee from the June 20 meeting—Senior Administrator #1—participated in an interview with Quinn Emanuel, and Senior Administrator #1 was unable to verify the statement in the FASA case management document that Gupta said that students reported to him. Neither OIE's records of contact for the interviews conducted in the investigation of Gupta's mandatory reporting failure, OIE's records of contact for the interviews conducted in the investigation of the RVSM Respondent's misconduct, nor the reports that OIE received regarding the RVSM Respondent's misconduct suggest that any student reported information about the RVSM Respondent's misconduct to Gupta.

With respect to what information was shared with Gupta, it is not clear that each piece of information, standing alone, would have constituted conduct the RVSM & Title IX Policy prohibits. During her interview, Woodruff acknowledged that excessive drinking, on its own, would not constitute a violation of the RVSM & Title IX Policy. But Woodruff stated that she believed information about “inappropriate” dancing would require reporting and, in fact, she stated that *any* behavior described as “inappropriate” would require a report to OIE. The Reporting Protocol is not worded so broadly, and Quinn Emanuel does not read “inappropriate” to be a category of reportable conduct. Woodruff’s interpretation would greatly expand the Reporting Protocol beyond its current scope.

Nonetheless, Gupta had enough information to assess that the RVSM Respondent’s conduct constituted reportable conduct, including the fact that Broad Administrators #1 and #2 told him they would be reporting the conduct to OIE. Even considering only the information that Gupta concedes he learned about the conduct of the RVSM Respondent at the Gala, it appears that Gupta should have reported to OIE.

*First*, Gupta was informed of allegations involving the RVSM Respondent that would constitute sexual misconduct under the Reporting Protocol, even if the term “sexual” was not used. Gupta conceded that the RVSM Respondent’s dancing was described as suggestive, which connotes a sexual nature. Gupta also acknowledged that he understood the RVSM Respondent had repeated the behavior with different students over the course of the night. Gupta also understood that the conduct was unwelcome and unwanted, because he said that he was informed that the RVSM Respondent repeatedly approached students to dance, and they turned the RVSM Respondent away. Thus, the prudent course of action would have been to report this alleged misconduct to OIE, or at minimum to seek guidance as to whether a report was required—an option offered on MSU’s webpage entitled “Information-for-Mandatory Reporters.”<sup>42</sup>

*Second*, Gupta concedes that he knew that Broad Administrators #1 and #2, who were both also mandatory reporters, considered the conduct reportable or at least arguably reportable, as they told Gupta they were filing reports with OIE. While Gupta stated that he believed Broad Administrators #1 and #2 filed reports just to play it “safe,” if Gupta was unsure as to whether the information he learned from these administrators was indeed reportable conduct, he could have sought guidance, but did not do so.

*Third*, Gupta stated during his interview that he believed he was prevented from asking the RVSM Respondent any follow-up questions due to the Reporting Protocol’s prohibition against personal investigation of violations of the RVSM & Title IX Policy (discussed further below). But Gupta’s reliance on this prohibition supports the inference that he understood that the RVSM Respondent’s behavior did—or at least might—constitute a violation of the RVSM & Title IX Policy; otherwise, there would have been no prohibition on questioning the RVSM Respondent.

*Fourth*, the Reporting Protocol does not excuse mandatory reporters from making a report where another person has already filed a report or states an intention to file a report. Jones Day’s 2017

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<sup>42</sup> MSU, “Information-for-Mandatory Reporters,” available at <https://civilrights.msu.edu/resources/information-for-mandatory-reporters.html>.

report<sup>43</sup> does not require a different conclusion. That report did not fault certain staff involved with MSU’s football team for not filing reports because these employees learned of a potential incident of alleged misconduct after the football coach had reported the incident to OIE. Rather, the Jones Day report states that these individuals did not learn any details about the incident and only knew that a report had been made and that an investigation was underway. According to the report, “[h]aving no details, and understanding that MSU PD was already investigating the incident, these staff members did not make a duplicative report to OIE or MSU PD. There is no evidence that these members of the football staff intentionally impeded, obstructed, or interfered in OIE’s investigation into the alleged sexual assault.”<sup>44</sup> In other words, the report does not categorically state that re-reporting is never required. Neither the Reporting Protocol nor the Jones Day report provide a limitation on reporting obligations and neither forecloses a finding that duplicate reports or re-reporting are required in certain circumstances.

Based on these first four considerations, Gupta should have reported the allegations about the RVSM Respondent’s conduct that he heard from Broad Administrators #1 and #2 “promptly.”<sup>45</sup>

ii. *Gupta Should Have Reported To OIE What He Heard From The RVSM Respondent Directly*

Even if Gupta did not report the information from Broad Administrators #1 and #2 to OIE, his subsequent direct conversation with the RVSM Respondent about the Gala should have been reported to OIE promptly.

The evidence from Quinn Emanuel’s review shows that the RVSM Respondent spoke to Gupta about the RVSM Respondent’s alleged misconduct on May 3, 2022, or May 4, 2022, *after* Gupta was informed that the RVSM Respondent was being reported to OIE. During his interview, Gupta stated that he did not believe he learned anything “new” from the RVSM Respondent that Broad Administrators #1 and #2 were not already reporting. However, the RVSM Respondent’s direct

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<sup>43</sup> Jones Day, Report of Independent Investigative Counsel Regarding the Michigan State University Football Program’s Response to Incidents of Alleged Sexual Violence (June 2017), p. 10, *available at* [https://media.clickondetroit.com/document\\_dev/2017/06/05/Jones%20Day%20report%20MSU\\_9904330\\_ver1.0.PDF](https://media.clickondetroit.com/document_dev/2017/06/05/Jones%20Day%20report%20MSU_9904330_ver1.0.PDF).

<sup>44</sup> In any case, as with the Jones Day report, the Quinn Emanuel Report, does not bind the University.

<sup>45</sup> If Gupta’s disclosures to OIE on June 22, 2022, constituted an OIE report, such report does not appear prompt. As discussed in the policy recommendations section of this Report, the term “promptly” is not defined, and Quinn Emanuel recommends that the University consider setting a concrete deadline upon which reports must be made after observing or learning about conduct the RVSM & Title IX Policy prohibit. However, given the plain meaning of the term “prompt,” i.e., “performed readily or immediately,” it is unlikely that Gupta’s June 22 disclosure to OIE—six to seven weeks after he initially heard about the RVSM Respondent’s conduct at the Gala—would be considered prompt.

admission of intoxication and of being “very sorry” for the RVSM Respondent’s behavior<sup>46</sup> was new information because it corroborated the allegations that the RVSM Respondent had been intoxicated and added new information—that the RVSM Respondent expressed that the RVSM Respondent was “very sorry” for the RVSM Respondent’s behavior. The RVSM Respondent’s admission should have been reported to OIE because, given the preceding reports from Broad Administrators #1 and #2, Gupta should have realized that the RVSM Respondent was under investigation for violating the RVSM & Title IX Policy, and the RVSM Respondent’s admission and apology were probative evidence that OIE should have had the opportunity to consider in investigating the RVSM Respondent’s conduct.<sup>47</sup>

In sum, given the totality of the facts and circumstances, Quinn Emanuel concludes that Gupta violated the Reporting Protocol. In strict adherence to the Reporting Protocol, Gupta should have reported the information Broad Administrators #1 and #2 disclosed. But in any event, Gupta should have reported the information the RVSM Respondent subsequently directly disclosed to Gupta, especially because Gupta already knew the Gala incident had given rise to OIE reports and that the RVSM Respondent had not been the source of the information Broad Administrators #1 and #2 reported.

## 2. Reason #2: Failure To Ask the RVSM Respondent Any Follow-Up Questions

**Summary: Gupta was prohibited from investigating the RVSM Respondent’s alleged misconduct under the Reporting Protocol and therefore he complied with the Reporting Protocol by not asking the RVSM Respondent any follow-up questions.**

### a. Applicable Policy And Relevant Facts

The Reporting Protocol expressly states that mandatory reporters “should *not* investigate or attempt to determine if alleged conduct occurred,” and that mandatory reporters are required to report only the “details known to them about the incident.”

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<sup>46</sup> According to OIE’s investigative memorandum, Gupta also told OIE that the RVSM Respondent said that “something happened that should not have.” The quotation marks in the OIE memorandum indicate that Gupta relayed this as a verbatim quotation from the RVSM Respondent. However, during his interview with Quinn Emanuel, Gupta said this was a mischaracterization of his comments. Notably, OIE’s record of contact for its June 22, 2022 interview of Gupta states that the RVSM Respondent told Gupta the RVSM Respondent had too much to drink at the Gala and that something happened that should not have—without quotation marks. This suggests that OIE was paraphrasing—rather than directly quoting—what Gupta reported.

<sup>47</sup> A mandatory reporter need not have every piece of evidence nor evidence of every element of a violation of the RVSM & Title IX Policy for such information to require reporting. However, as discussed below, OIE’s failure to document Gupta’s information in the RVSM Respondent’s case file appears to undermine the inference that OIE would have relied on the RVSM Respondent’s admission in this particular case. That appears to be an error on OIE’s part and does not affect Quinn Emanuel’s assessment of whether Gupta violated the Reporting Protocol.

There is no dispute that when the RVSM Respondent told Gupta that he drank too much at the Gala and was “very sorry” for the RVSM Respondent’s behavior, Gupta did not ask the RVSM Respondent any follow-up questions.

b. Administration’s Position

Woodruff cited Gupta’s failure to ask the RVSM Respondent any follow-up questions as one of the reasons for the personnel actions taken against Gupta, as highlighted in this excerpt from the August 18 Letter:

Dr. Gupta has indicated (and the OIE Memo provides) that [REDACTED] reported to him that [REDACTED] had been intoxicated and acted inappropriately at an end-of-year MBA event attended by students. Dr. Gupta reported that he did not receive further information nor request it. It is concerning that a dean would not ask for further information when presented with such assertions by [REDACTED]. A leader should want to know the nature of the situation and what follow-up action would be necessary and appropriate.

In her interview, Woodruff acknowledged the Reporting Protocol’s prohibition against personal investigation but stated that, as a dean, Gupta should have asked the RVSM Respondent “common-sense” follow-up questions to enable the right outcomes.

c. Gupta’s Position

In his interview, Gupta asserted that the Reporting Protocol prohibited him from asking any further questions of the RVSM Respondent. As with the mandatory reporting failure discussion, he also stated that he had no reason to believe the RVSM Respondent was apologizing for more than excessive drinking and viewed the RVSM Respondent’s expression of remorse as pertaining to being intoxicated.

d. Quinn Emanuel’s Assessment

Quinn Emanuel concludes that this second-stated rationale—the failure to investigate or ask follow-up questions—is inconsistent with the Reporting Protocol.

The Reporting Protocol expressly states that mandatory reporters “should *not* investigate or attempt to determine if alleged conduct occurred,” and mandatory reporters are required to report only the “details known to them about the incident.”

Indeed, the Jones Day report, referenced above, states that additional questions or personal investigation would constitute a violation of the Reporting Protocol. That report praised a MSU employee who, upon learning of a potential RVSM violation, “stopped the [potential witness] before he could provide details” and, “in accordance with policy, refrained from investigating the incident any further. . . [and] did not learn any additional details regarding . . . who was involved,

when or where it occurred, or what may have happened.”<sup>48</sup> In contrast, the same report found that an MSU staff member had violated the Reporting Protocol by asking for additional information and speaking to students who were alleged to have been involved in the incident. The report states: “[t]he investigation is to be conducted by trained professionals—OIE and law enforcement. In this case, the evidence available to us shows that, in contravention of these rules, the staff member conducted his own inquiry into the incident.”<sup>49</sup>

As indicated above, Woodruff stated in her interview that even though the Reporting Protocol prohibits investigating or attempting to determine if alleged conduct occurred, as a matter of judgment as a dean, Gupta should have asked the RVSM Respondent “common sense” follow-up questions when the RVSM Respondent apologized for the RVSM Respondent’s behavior. She expressed that same view in her August 18 Letter. Accordingly, Woodruff’s leadership expectations of Gupta, while not unreasonable on their face, appear to have been in direct conflict with the Reporting Protocol. Whereas good leadership judgment may well have included asking the RVSM Respondent follow-up questions in the *absence* of the Reporting Protocol, as currently written, the Reporting Protocol *does not permit* any such follow-up questions, thereby precluding personnel actions on that basis.

### 3. Reason #3: Causing a Two-Month Delay In Interim Actions By Not Reporting to FASA

**Summary: OIE was obligated to report the allegations against the RVSM Respondent to FASA pursuant to a written University policy, and it thus appears that the two-month delay in implementing interim measures that Woodruff cited is primarily attributable to OIE’s delay in notifying FASA to start that process, not Gupta.**

#### a. Applicable Policy And Relevant Facts

MSU policies obligate OIE—not mandatory reporters, deans, or department administrators—to notify FASA—the entity that oversees interim measures—of an alleged RVSM violation. Specifically, MSU’s Protocol for Coordinated Response Between FASA, OER, OCR, OIE, HCI, and Unit Leadership of Reported Violations of the RVSM & Title IX Policy and ADP (the “Coordination Protocol”) charges OIE with the responsibility of notifying FASA of an RVSM investigation of alleged misconduct by an MSU employee. The Coordination Protocol states: “OIE

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<sup>48</sup> Jones Day, Report of Independent Investigative Counsel Regarding the Michigan State University Football Program’s Response to Incidents of Alleged Sexual Violence (June 2017), p. 11–12, *available at* [https://media.clickondetroit.com/document\\_dev/2017/06/05/Jones%20Day%20report%20MSU\\_9904330\\_ver1.0.PDF](https://media.clickondetroit.com/document_dev/2017/06/05/Jones%20Day%20report%20MSU_9904330_ver1.0.PDF).

<sup>49</sup> *Id.* at 13. The current Reporting Protocol became effective August 14, 2020, after Jones Day’s report. However, the reporting policy in place at the time of Jones Day’s report prohibited attempts to investigate, like the current Reporting Protocol does. As quoted in the Jones Day report, the reporting policy in place at that time stated: “Don’t try to investigate; Don’t try to determine if a crime or violation of policy occurred; [and] Don’t try to determine if a sexual encounter was/wasn’t consensual.”

will notify FASA and/or OER and administrative unit leadership of reported violations involving employees as respondents.”

FASA then meets with the relevant department leadership to help the leadership determine what, if any, “interim” or “supportive” measures are needed for a claimant or respondent, “including, but not limited to, protecting the safety of all parties or the University’s educational or employment environment or to deter conduct prohibited” by the RVSM & Title IX Policy. Such measures may include referrals to counseling, modification of work or class schedules, mutual no-contact directives, leaves of absence, and other measures.

The Coordination Protocol provides that OIE is to inform FASA of a pending RVSM investigation of an employee respondent. The Coordination Protocol gives OIE discretion as to when to make this notification, and states that factors relevant to the timing include “the type of report; available details of the reported conduct; potential safety risk; need for immediate interim employment action; need for unit involvement to implement supportive measures, and need for consideration under other policies.” In RVSM and Title IX cases, “absent circumstances that require early notification,” OIE is not required to send the notification until after a signed formal complaint has been submitted. Once OIE informs FASA of a pending RVSM or Title IX investigation, the administrative unit leadership, in coordination with FASA, can determine any appropriate interim measures.

On or about April 27, 2022, Gupta spoke with Broad Administrator #2, where he learned information about the allegations against the RVSM Respondent. According to the OIE memorandum, Broad Administrator #2 told OIE that Gupta “suggested instituting a plan to govern drinking at similar events,” and OIE’s record of contact for its June 30, 2022 interview of Broad Administrator #2 further reflects that Broad Administrator #2 told OIE that “there is [now] a two (2) drink limit at any University sponsored events.”

OIE received its first report of the RVSM Respondent’s alleged misconduct on April 24, 2022,<sup>50</sup> but OIE did not inform FASA—the entity responsible for addressing interim measures arising from potential RVSM violations—of these reports or its resulting investigation for *six weeks*. Then, on Thursday, June 16, 2022, OIE Employee #1 sent an email to Gupta and FASA Administrator, with the subject line “Early notification to Unit/FASA in [2022-00671].” The e-mail included the following:

OIE received information that unidentified students may have experienced sexual harassment and/or nonconsensual sexual contact from [the RVSM Respondent] [Faculty] in violation of the RVSM. OIE typically will not send the unit notification in RVSM cases until a formal complaint is signed, but OIE has determined to send an early notification in this case based on health and safety.

OIE indicated it was reviewing the matter to determine whether there was sufficient information to warrant an investigation.

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<sup>50</sup> The OIE memorandum references the initial reports being received on April 23, 2022, but the earliest report included in the case file Quinn Emanuel reviewed is dated April 24, 2022.



On June 20, 2022, Gupta, FASA Administrator, Senior Administrator #1, and three others met to discuss appropriate interim actions and determined that the RVSM Respondent's contact with students should be limited pending the results of OIE's investigation. Later that same day, Gupta informed the RVSM Respondent via email of the interim actions, as shown in the excerpt below.

In light of recent concerns raised related to your conduct, I am writing to notify you that effective immediately and pending the results of the review of the concerns raised, any contact you may have with MSU students should be done remotely and related only to their academics or their career related matters. Please let me know if you have questions or anticipate any issues with this directive. Please note that MSU prohibits retaliation (including but not limited to retaliatory harassment, discrimination, intimidation, or coercion) against individuals who report potential violations of policy, discrimination, harassment, or who participate in the University's response to these reports. Any allegation of retaliation will be deemed a separate and distinct violation of policy and will be investigated independently.

b. Administration's Position

Woodruff held Gupta responsible for a two-month delay in interim measures regarding the RVSM Respondent, which she said demonstrated lack of proper leadership and judgment. In her August 18 Letter, she stated:

Dr. Gupta did not consult with FASA after he learned about the [REDACTED] incident. FASA was unaware of the incident until it was notified on June 16. Customary actions of a dean when faced with a situation such as self-reported misconduct by [REDACTED] include informing and discussing the situation and potential steps forward with FASA to ensure all aspects of the situation are addressed, including compliance requirements.

Dr. Gupta did not himself take any interim measures to protect students or anyone potentially impacted by the event until FASA held the June 20 meeting. At the June 20 meeting, appropriate interim measures concerning [REDACTED] were instituted, including limiting [REDACTED] interactions with students to virtual and only those related to academics or students' careers. As noted above, however, Dr. Gupta's leadership lapse – not contacting OIE or FASA – resulted in a lack of interim measures for nearly two months (April 22 - June 20).

In her interview, Woodruff acknowledged that no policy required Gupta to report to FASA, but she stated that he should have nevertheless done so as a matter of good judgment. She indicated that executive managers such as deans are expected to “work by policy” but also “by judgment,” which is a “higher bar” she expects of deans. Woodruff stated that although deans are responsible for imposing interim measures, FASA is their “partner in developing strategies.” She stated that “there’s a hierarchy in the academy that a dean’s voice is the most profound,” and if Gupta had made a call to OIE, “actions would [have] be[en] enabled.”

When asked about Gupta’s purported discussion with Broad Administrator #2 where he told Broad Administrator #2 that they should institute a new policy governing alcohol consumption at future events, Woodruff stated that this was a good “macro” measure, but it was not an interim measure designed to address harms to specific students from the RVSM Respondent’s alleged misconduct. She was not aware of Gupta’s alleged suggestion of a policy to require a faculty member to stay for the entirety of future events but characterized that as “future think” as well.

According to Woodruff, the appropriate interim measures that Gupta should have taken immediately were the ones that were ultimately taken on June 20 to limit the RVSM Respondent’s interactions with students to remote interactions and pertaining only to students’ academic or career matters.

c. Gupta’s Position

Gupta disputes that he should be held responsible for any delay in interim measures, that the interim measures taken on June 20 were necessary, and that he did not take any interim measures upon learning of the RVSM Respondent’s behavior.

During his interview, Gupta stated that he did not believe he was required to report to FASA under current policies. Gupta also stated that although he went along with the interim measures decided during the June 20 meeting, he saw these interim measures, which were designed to limit the RVSM Respondent’s contact with students, as “perfunctory.” He stated that around the time he learned of the RVSM Respondent’s alleged misconduct in late April 2022, all Broad College students were leaving campus because the Spring Semester was over on April 29, 2022, and students were leaving campus for summer internships or because they had graduated, and those leaving for summer internships would not return before the RVSM Respondent’s last day at MSU (June 30, 2022).

Gupta further stated during his interview that he *did* take actions upon learning of the RVSM Respondent’s alleged misconduct. Specifically, Gupta stated that he discussed with Broad Administrator #2 that they should implement two new policies: (i) a policy to limit alcohol consumption at future events; and (ii) a policy to require at least one faculty member to stay for the entire duration of any future event.

Because Gupta said he believed that the RVSM Respondent’s “inappropriate” conduct was drinking too much, and not sexually inappropriate conduct, he said he focused his conversation with Broad Administrator #2 on implementing policies that would limit alcohol consumption at University-sponsored events.

d. Quinn Emanuel’s Assessment

It is undisputed that Gupta did not share with FASA the information that he learned about the RVSM Respondent’s alleged misconduct before the June 20, 2022 meeting. However, the Coordination Protocol places responsibility on OIE—not mandatory reporters—to notify FASA of RVSM and Title IX violations, which triggers the assessment of whether any interim measures are needed.

Notwithstanding this responsibility, and despite having knowledge of the RVSM Respondent's alleged misconduct since April 24, 2022, OIE waited six weeks before notifying FASA of its investigation. To date, Quinn Emanuel has received no clear justification for this delay. Accordingly, given that OIE was expressly assigned the responsibility to notify FASA of pending RVSM investigations, the Administration's rationale for taking personnel actions against Gupta based on his failure to notify FASA is inconsistent with the Coordination Protocol that assigned such responsibility to OIE.

Moreover, as a practical matter, Gupta's mandatory reporting failure did not impact OIE's ability to notify FASA earlier than it chose to do so in this case. OIE began receiving reports of the RVSM Respondent's alleged misconduct on April 24, 2022—before Gupta learned of the alleged misconduct. Gupta had reason to believe that OIE had received reports, as both Broad Administrators #1 and #2 told him that they were filing reports. Quinn Emanuel did not receive any information suggesting that, had Gupta reported to OIE, it would have resulted in OIE notifying FASA earlier and interim measures being taken sooner.

During her interview, Woodruff stated that irrespective of the policies, Gupta exercised poor judgment in not notifying FASA of the RVSM Respondent's alleged conduct or imposing interim measures himself. This position imposes an expectation on senior leadership that is not expressly stated in the Coordination Protocol and conflicts with the Coordination Protocol's placement of the notification burden on OIE. Had the University wanted senior administrators to report alleged RVSM violations to FASA (to initiate the discussion of interim measures), it could have so stated in its recently enacted Protocol. Woodruff's interview statement that "a dean's voice is the most profound"—if accurate—could have unintended consequences and lead to the perception that OIE and FASA will give more attention to alleged RVSM violations reported by a senior administrator than those in which no such higher-level official is involved.

In terms of the actions that Gupta states he took upon learning of the RVSM Respondent's alleged misconduct, there is evidence to corroborate some of these actions. OIE's investigative memorandum reflects that Broad Administrator #2 told OIE that Gupta did "suggest[] instituting a plan to govern drinking at similar events," and OIE's record of contact for its June 30, 2022 interview of Broad Administrator #2 further reflects that Broad Administrator #2 told OIE that "there is [now] a two (2) drink limit at any University sponsored events." But OIE's discussion of its interview with Broad Administrator #2 does not indicate that Broad Administrator #2 told OIE that Gupta also suggested a policy requiring the attendance of at least one faculty member for the duration of university-sponsored events. Because Broad Administrator #2 declined Quinn Emanuel's interview request, Quinn Emanuel was unable to ask Broad Administrator #2 about his discussion of remedial measures with Gupta.

Even if Gupta spoke with Broad Administrator #2 about implementing the two policy changes, Quinn Emanuel concurs with Woodruff that the actions Gupta discussed—limiting alcohol sales at university-sponsored events and requiring a staff member to remain until the event has concluded—appear to be forward-looking measures that did not address any particularized interim measures for the students who attended the Gala, or who interacted with the RVSM Respondent at the Broad College. Such actions are not the kind of immediate steps, such as counseling referrals, no-contact directives, or suspension of student activities, that are contemplated as interim

measures under the Coordination Protocol. However, Gupta’s lack of arguably appropriate interim measures may have been related to his stated understanding that the RVSM Respondent’s inappropriate behavior was limited to intoxication.

There is some support for Gupta’s position that student attendance on campus was minimal after the Gala. An email FASA Administrator sent to OIE Employee #1 on June 22, 2022, states that “[m]ost” students left for the summer on internships, except for two PhD students in Finance,” who “may” have remained on campus. The academic calendar for the Broad College indicates that the final day of classes was April 29, 2022, with exams occurring through May 6, 2022.

Irrespective of the number of students on campus, it was OIE, not Gupta, that had the obligation under the governing University policy to notify FASA of its investigation, and its failure to do so promptly is the primary cause of the six-week delay in interim measures designed to protect student safety. In holding Gupta entirely accountable for this delay and absolving OIE of any responsibility, the Administration’s position is out of alignment with the University’s stated policies and procedures.

#### **4. Reason #4: Failure To Notify FASA In Conjunction With The RVSM Respondent’s May 10, 2022 Leave To Retirement Request**

**Summary: There is no indication Gupta knew about the RVSM Respondent’s May 10, 2022 request for leave to retirement at the time it was made or that his approval was sought or required under applicable policies. Thus, he did not violate any University policy by not notifying FASA of the allegations against the RVSM Respondent in connection with the leave to retirement request.**

##### **a. Applicable Policy And Relevant Facts**

Leave to retirement is a special retirement option for MSU employees who have not yet become vested for retirement benefits but are two years or less from meeting the minimum requirements. To obtain leave to retirement, an MSU employee must complete a form and submit it to MSU Human Resources. The form must then be “approved by all necessary areas (including any applicable steps by [the employee’s] . . . department, the office of Faculty and Academic Staff Affairs, HR Employee Relations, etc.).”<sup>51</sup>

On May 10, 2022, the chairperson of the department where the RVSM Respondent was a faculty member (Broad Administrator #3) submitted a leave to retirement request on the RVSM Respondent’s behalf to FASA, as reflected by the below email. Gupta is neither a recipient of this email nor copied on it.

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<sup>51</sup> MSU Human Resources, “Special Retirement Situations,” *available at* <https://hr.msu.edu/benefits/retirement/special-retirement-situations.html>.

One of our distinguished faculty members, [REDACTED], recently informed us that [REDACTED] would like to pursue a leave-to-retirement. [REDACTED] has been at MSU for 24 years and is officially eligible for full retirement on 5/1/2023. [REDACTED] has already officially informed Dean Gupta that [REDACTED] will step down as [REDACTED] effective June 30, 2022. [REDACTED] would like to simultaneously sign a standard MSU leave-to-retirement agreement effective this same date (i.e., on leave from 7/1/2022 until 4/30/2023, with an official retirement date 5/1/2023). [REDACTED] has been a highly valued member of our community and profession. While we regret [REDACTED] decision to take a leave to retirement, we fully support [REDACTED] application so that [REDACTED] can tend to some family health situations and lecture/consult without the pressures of a tenured faculty position at MSU.

The university website indicates that we need approval from your office before we submit the official leave of absence form and attach [REDACTED] leave-to-retirement special situations form to the associated paperwork. Given the short time frame between now and [REDACTED] intended leave date and the significant budget implications for our unit (we need [REDACTED] salary released to hire some replacement instructors), it would be most appreciated if the approval on this could be expedited. I am copying [REDACTED] on this email as she is assisting using wading through these steps.

The special situation form and the leave of absence form attached to Broad Administrator #3's email contain signature blocks only for—and are signed only by—the RVSM Respondent. After receiving the RVSM Respondent's leave to retirement request, FASA approved it. At that time, FASA was unaware of the allegations against the RVSM Respondent, as it had not yet been notified by OIE. After FASA became aware of the allegations, Senior Administrator #1 emailed the RVSM Respondent on June 29, 2022—copying Gupta, Broad Administrator #3, and FASA Administrator—and attached to that email a letter that revoked the RVSM Respondent's leave to retirement pending further investigation.<sup>52</sup>

b. Administration's Position

Woodruff faulted Gupta for not informing FASA of the RVSM Respondent's alleged misconduct at the time the RVSM Respondent's leave to retirement request was submitted to FASA, as highlighted in the below excerpt from the August 18 Letter.

Before the June 20 interim measures meeting and Dr. Gupta's disclosures at that meeting, but after faculty and students told Dr. Gupta about the event and sexually inappropriate behavior, on May 10, the college sent a request to FASA to approve a leave to retirement for [REDACTED] beginning 7/1/22. However, no indication accompanied the request about the fact that [REDACTED] was being reviewed by OIE. Once FASA learned of the OIE investigation on June 16, it revoked the approval for leave to retirement.

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<sup>52</sup> In response to this letter, on June 30, 2022, the RVSM Respondent sent a letter to Senior Administrator #1 wherein the RVSM Respondent resigned from MSU, effective as of that date.

In her interview with Quinn Emanuel, Woodruff stated that even if Gupta was not involved in submitting the RVSM Respondent's leave to retirement request, because Gupta was aware of information concerning the RVSM Respondent's alleged misconduct, Gupta should have been "engaged in enabling the right outcomes" for the RVSM Respondent. Woodruff described the RVSM Respondent's securing of a job at another university ("University #2") as a "soft landing." When asked whether she believed Gupta had helped the RVSM Respondent obtain leave to retirement and secure a job at University #2 as a "soft landing" to avoid consequences for the RVSM Respondent's alleged misconduct at MSU, Woodruff said no, but that young women should be able to attend a celebratory event without being harmed and that wrongdoers should not be allowed to go to different institutions and repeat the same behavior. When asked whether University #2 had been informed of the findings against the RVSM Respondent, Woodruff said no, noting that MSU does not have a "formal 'pass the harasser' policy."

c. Gupta's Position

In his interview with Quinn Emanuel, Gupta stated that he was not involved in the RVSM Respondent's leave to retirement request. Gupta acknowledged that, prior to the Gala, the RVSM Respondent told Gupta of the RVSM Respondent's intention to resign from MSU to go teach at University #2; however, Gupta stated that he was unaware that the RVSM Respondent had submitted a leave to retirement request until Senior Administrator #1 sent the June 29, 2022 letter revoking the RVSM Respondent's leave to retirement.

d. Quinn Emanuel's Assessment

Quinn Emanuel finds the leave to retirement leadership failure to be unsupported by facts or University policy. No policy required Gupta to oversee the RVSM Respondent's leave to retirement request, and Quinn Emanuel found no evidence that Gupta knew of or was involved with the RVSM Respondent's request for leave to retirement until it was revoked on June 29, 2022.

Leave to retirement allows the faculty member to receive retirement benefits that would otherwise be forfeited from resigning before a faculty member's retirement eligibility date. As discussed above, to obtain leave to retirement, MSU employees must complete a special form and submit it to MSU Human Resources. The form must then be "approved by all necessary areas (including any applicable steps by [the employee's] . . . department, the office of Faculty and Academic Staff Affairs, HR Employee Relations, etc.)."<sup>53</sup> A dean's approval is not required.

Before learning about the RVSM Respondent's alleged misconduct, Gupta was aware that the RVSM Respondent intended to *resign* from MSU to teach at University #2. A letter from the RVSM Respondent to Gupta, dated May 4, 2022, reflects that the RVSM Respondent and Gupta had "discussions in the past few weeks" about the RVSM Respondent's resignation from the RVSM Respondent's administrative role, and the RVSM Respondent told Gupta that the RVSM Respondent was resigning, effective June 30, 2022.

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<sup>53</sup> MSU Human Resources, "Special Retirement Situations," *available at* <https://hr.msu.edu/benefits/retirement/special-retirement-situations.html>.

Faculty #1 confirmed in an interview with Quinn Emanuel that Gupta knew of the RVSM Respondent's intention to resign as of April 2022, as Gupta called Faculty #1 about filling the RVSM Respondent's administrative position on an interim basis. However, Quinn Emanuel found no evidence that Gupta was aware of the RVSM Respondent's intention to seek *leave to retirement*. In the May 4 letter, the RVSM Respondent announced the RVSM Respondent's intention to resign, but the RVSM Respondent did not mention the RVSM Respondent's intention to seek leave to retirement:

As I have indicated to you verbally in our discussions in the past few weeks, I will be stepping down from my position as [REDACTED]. Please consider this letter as my official resignation from my [REDACTED] role, effective June 30, 2022. If a suitable replacement is found earlier than this June 30<sup>th</sup> date, I will resign effective whatever date prior to June 30<sup>th</sup> that you request.

It has been a pleasure and honor to serve in [REDACTED] role under your leadership. I have learned much in the process. The Broad College is a complex organization, and I am continually impressed by the Broad community and its constituent parts. I am more than willing to work closely with my successor to smoothly hand over the reins and share my knowledge of various [REDACTED] issues.

Likewise, as shown in the following excerpt, a May 5, 2022 email that Gupta sent to Broad College faculty members reflects that Gupta was aware of the RVSM Respondent's plans to resign, but it mentions nothing about the RVSM Respondent's plans to seek leave to retirement:

This is to inform you that [REDACTED] has submitted [REDACTED] resignation from the MSU faculty and [REDACTED] role in the Broad College. I have accepted [REDACTED] resignation with much regret.

We will begin the process of searching for and appointing a faculty colleague in this role as soon as possible. If you have any thoughts or suggestions on how we might address filling this important role for the college, please let me know.

Further, Broad Administrator #3—not Gupta—sent the RVSM Respondent's leave to retirement request to FASA. Gupta was not a recipient of the email or copied on the request. The May 10 email to Gupta does not state that the RVSM Respondent ever informed Gupta of the RVSM Respondent's intent to seek leave to retirement.

In addition, Quinn Emanuel found no evidence that would suggest that Gupta helped the RVSM Respondent find the position at University #2 to assist in a "soft landing" after the RVSM Respondent's alleged misconduct, a theory that (i) Broad Administrator #3 stated OIE suggested to him and that (ii) Woodruff also referenced in her interview. Quinn Emanuel agrees that this "soft landing" theory lacks support because no evidence supporting such a theory was provided to Quinn Emanuel, and the RVSM Respondent would likely have had to start the process of finding a new employer much earlier than when Gupta learned of the RVSM Respondent's behavior at the Gala.

An email from University #2's Human Resources to the RVSM Respondent on May 23, 2022, shows that the RVSM Respondent completed the offer process for the RVSM Respondent's new position at University #2 on that date. According to the RVSM Respondent's webpage on University #2's website, the RVSM Respondent has a chair position at University #2. During his interview with Quinn Emanuel, Broad Administrator #3 stated that it would have been "impossible" for Gupta to get the RVSM Respondent this job within just a few weeks of the Gala, explaining that there is a process to obtain those types of positions that typically takes "a couple months" and requires soliciting letters of support.

In sum, it is Quinn Emanuel's view that the Administration's position that Gupta failed to notify FASA about the RVSM Respondent's alleged misconduct in connection with the RVSM Respondent's leave to retirement request is unsupported by any available evidence, given that a dean's approval is not required for leave to retirement, and there is no indication that Gupta was aware of or that the RVSM Respondent involved Gupta in that request.<sup>54</sup>

#### **5. Reason #5: Involvement In The RVSM Respondent's Impermissible Outside Work For Pay**

**Summary: The Administration's position that Gupta failed to properly address the RVSM Respondent's alleged violation of the OWP Policy by failing to obtain approval to teach at another university in June 2022 is a closer question. Gupta was aware that the RVSM Respondent had previously taught at other universities during summer breaks, sometimes without submitting the requisite form requiring the dean's approval. However, there is no indication that either the RVSM Respondent or the administrator in charge of handling OWP requests informed Gupta that the RVSM Respondent planned to teach at another university in June 2022; that information came from FASA. And the RVSM Respondent had already announced a June 30, 2022 retirement, creating the reasonable inference that any summer work would occur after the RVSM Respondent's departure. Thus, while Gupta may have overly delegated OWP requests, there is insufficient basis to hold him responsible for the RVSM Respondent's failure to comply with the OWP Policy in June 2022.**

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<sup>54</sup> The RVSM Respondent's leave of absence form states that the RVSM Respondent was seeking leave to retirement "so that [the RVSM Respondent] can tend to some family health situations and lecture/consult without the pressures of a tenured faculty position[] at MSU." The FASA case management document suggests that Gupta should have informed FASA that real reason that the RVSM Respondent was seeking leave to retirement was to teach at University #2. Because Gupta was unaware of the RVSM Respondent's May 10 leave to retirement request at the time it was made, it does not make sense to fault Gupta for not correcting the stated reasons for leave in the RVSM Respondent's form.



a. Applicable Policy And Facts

The University's OWP Policy<sup>55</sup> applies to faculty members who hold appointments of at least 50% time at MSU. Such faculty members may request approval to engage in outside work for pay during duty periods if certain criteria are met. According to the policy, a "duty period" for faculty members on an academic year ("AY") appointment is "the nine-month period running from August 16th through May 15th of the following calendar year. If a faculty member on an AY appointment receives a summer assignment, the duration of the summer assignment is also part of the duty period." The duty period for faculty members on an annual ("AN") appointment is "the 12-month period running from August 16th through August 15th of the following calendar year (or any other 12-month period specified in the relevant appointment letter)." OWP performed during off-duty periods still must meet the listed criteria in the policy, but "the approval process" is not required.

Under the policy, a faculty member must request and obtain the written approval of the respective "unit administrator and *dean*" before engaging in the outside work during a duty period.<sup>56</sup> The policy states that a faculty member can request an exemption from the policy; to take effect, such requests must be "approved in writing by the applicable department chair/director and dean/separately reporting director and by the Provost or his/her designee." According to several interviewees, requests to perform OWP are almost always approved.<sup>57</sup>

On June 21, 2022, FASA Administrator emailed Gupta, stating that the RVSM Respondent was "currently teaching" at an outside university ("University #1") and asked whether an OWP form had been completed. On that same day, Gupta forwarded this email to Broad Administrator #3, asking the administrator to send him a response to the FASA email. Broad Administrator #3 responded: "It seems that [the RVSM Respondent] is indeed [sic] will be teaching there, but [the RVSM Respondent] will be paid in July and August (after [the RVSM Respondent's] exit). So, this is off-duty unpaid period. I do not think we need OWP form there." On June 22, 2022, Gupta thanked Broad Administrator #3 for the response. Broad Administrator #3 replied: "Just in case, we are fin[d]ing OWP form as well. Again, I do not think we need it as he is paid only after June 30. But better be safe..."

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<sup>55</sup> Outside Work for Pay Policy, *available at* [https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/outside\\_work\\_for-pay.html](https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/outside_work_for-pay.html).

<sup>56</sup> *Id.* (emphasis added).

<sup>57</sup> Similarly, MSU's policy on Dual Appointments states that no faculty or academic staff member "holding a full-time appointment at Michigan State University may, during the term of the appointment, or while on leave of absence, simultaneously hold a paid *appointment* at another institution." (emphasis added). Exceptions to this policy "must be approved in advance by the Dean and by the Provost and Executive Vice President for Academic Affairs (or designee)." *See* Dual Appointments (rev. April 15, 2019), *available at* [https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/dual\\_appointments.html#:~:text=No%20faculty%2Facademic%20staff%20member%20holding%20a%20full-time%20appointment,simultaneously%20hold%20a%20paid%20appointment%20at%20another%20institution.](https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/dual_appointments.html#:~:text=No%20faculty%2Facademic%20staff%20member%20holding%20a%20full-time%20appointment,simultaneously%20hold%20a%20paid%20appointment%20at%20another%20institution.)

Gupta emailed FASA Administrator: “I checked with [Broad Administrator #3] and this is [Broad Administrator #3’s] understanding: [the RVSM Respondent] is indeed teaching there, but [the RVSM Respondent] will be paid in July and August (after [the RVSM Respondent’s] exit). So, this is off-duty unpaid period at MSU, so we shouldn’t need OWP form there.”

FASA Administrator responded that it was “problematic” because the RVSM Respondent was teaching at University #1 at that time and was also “currently AN faculty here (. . . no off-duty period),” and thus the RVSM Respondent was violating University policies.

A few minutes later, a Broad College staff member sent Gupta an outside work for pay form via email, stating that Broad Administrator #3 had asked the staff member to send the form to Gupta. The form attached to the email contains conflicting statements regarding the period during which the RVSM Respondent would be teaching at University #1, stating at one point that the work would begin on July 1, 2022, and at another point that the work began in the latter half of June 2022:

**OUTSIDE WORK FOR PAY**

1. This work will be performed for [REDACTED] (name of firm, agency, etc.)

during the period\* from July 1, 2022 through August 20, 2022 and will involve an estimated total of 12 days during the period specified.

This work will be performed for an entity or individual for which or whom University research has also been conducted.

2. General description of work: Teaching two sections of BUS 35000 in Summer Quarter at [REDACTED] on Friday nights and Saturday afternoons. I am paid as a visiting/adjunct professor by [REDACTED] for the months of July and August by [REDACTED]. First two lectures are in latter half of June. Given pay structure and leave-to-retirement/unpaid status commencing on 7/1/2022, all outside work will occur during non-duty period. No approval sought per my understanding of MSU rules.

The form contains a signature from the RVSM Respondent that is dated June 15, 2022, and a signature from Broad Administrator #3 that is dated June 17, 2022. The signature line for the dean is left blank. The document properties reflect that the OWP form was created on June 22, 2022. Gupta forwarded this form to FASA Administrator without signing it himself. Given the discrepancy between the signature dates and the document creation date, FASA concluded in the case management document that the form had been backdated, but that “[i]t was unclear whether Dean Gupta knew that the form was back dated, as he didn’t sign it.”

During Quinn Emanuel’s interviews, Gupta and interviewees, including Broad Administrator #3 and an individual who previously held an administrative position in the Broad College (“Faculty #2”), stated their shared belief that the RVSM Respondent had reached an agreement with a former dean and provost in which the RVSM Respondent was allowed to teach during off-duty periods at schools that the then-dean did not consider competitors to the University, including University #1 and University #3. Quinn Emanuel requested and received documents related to the RVSM

Respondent's prior outside work at University #1, but these materials did not include any written agreement between the RVSM Respondent, a former dean, and a former provost to permit the RVSM Respondent to teach at University #1. Quinn Emanuel identified a July 2020 email from Faculty #2 to a former associate provost, referencing a prior dean and prior provost reaching an agreement that the RVSM Respondent could teach during off-duty periods at other schools; it was followed by an email from the former associate provost approving the RVSM Respondent's request for permission to teach at University #3. Interviewees also indicated that OWP forms were generally approved.

b. Administration's Position

Woodruff cited Gupta's involvement in facilitating the RVSM Respondent's improper outside work for pay as one of the reasons for the personnel actions against Gupta.

In late June, FASA and OGC also became aware that [REDACTED] was currently teaching at [REDACTED]. However, because no request had been submitted to FASA for an exception to the Dual Appointment policy or Outside Work for Pay policy, [REDACTED] was not approved for this situation. When expressly asked whether an Outside Work for Pay form or Dual Appointment Form had been completed regarding this work, Dean Gupta said that it was not necessary since [REDACTED] [REDACTED] would not be paid until [REDACTED] leave would start on July 1. However, the work had already begun, and approval is required.

During her interview, Woodruff stated that she relied on the materials from FASA in determining that Gupta had not appropriately handled the RVSM Respondent's outside work for pay situation. When asked whether she was aware of any prior agreements to permit the RVSM Respondent to work at University #1, Woodruff said that she did not know one way or another whether such an agreement existed, but that even if such an agreement existed, she believed that the RVSM Respondent would still need to obtain approval before performing outside work for pay. Woodruff also stated that any agreement allowing the RVSM Respondent to perform outside work for pay without prior approval would be "unbecoming" of the Broad College because there should be a culture of "adhering" to MSU's "policies and values."

c. Gupta's Position

During his interview, Gupta stated that when FASA told him about the RVSM Respondent's outside work, Gupta believed that the RVSM Respondent did not need an OWP approval because the RVSM Respondent would be performing and be compensated for this work after the effective date of the RVSM Respondent's resignation (June 30, 2022)—i.e., during an off-duty period. Gupta conceded that he was aware that the RVSM Respondent had a history of teaching at University #1 in the summers. However, Gupta also stated that he believed the RVSM Respondent had performed this work in prior summers during off-duty periods (making the OWP Policy inapplicable). He also referenced an agreement between the RVSM Respondent, a prior dean of

the Broad College, and a prior provost permitting the RVSM Respondent to teach at University #1 based on an understanding that it was not a competitor to the Broad College.

d. Quinn Emanuel's Assessment

Absent a written agreement<sup>58</sup> to the contrary, which Quinn Emanuel could not confirm, it appears that under the OWP Policy, the RVSM Respondent should have obtained Gupta's approval prior to teaching at University #1 in summer 2022, before the RVSM Respondent's effective resignation date of June 30, 2022. The policy applies because the RVSM Respondent began teaching prior to the RVSM Respondent's resignation date and the annual (AN) appointment triggered the Policy.<sup>59</sup> Broad Administrator #3 and Faculty #2 each stated their belief that an OWP agreement existed, and Faculty #2 stated his belief that this agreement likely existed on the "dean's drive." While the files from the "dean's drive" the University provided in response to Quinn Emanuel's request contained communications from Faculty #2 referencing the existence of this OWP agreement, these materials did not include an OWP agreement.

With respect to the RVSM Respondent's summer 2022 work, Gupta was not informed that the RVSM Respondent would begin teaching prior to the RVSM Respondent's June 30th resignation date (in fact, the RVSM Respondent taught two lectures at University #1 in June 2022 prior to the RVSM Respondent's resignation date), and Broad Administrator #3 appears to have requested that the RVSM Respondent complete the OWP form before June 22, 2022, but he did not receive the form until seven to ten days later around June 22, 2022, after FASA requested it.<sup>60</sup>

Based on a review of the available factual record, it does not appear that Gupta should be penalized for the RVSM Respondent's violation of the OWP Policy.

*First*, the OWP Policy places the onus on the faculty member performing the outside work for pay to seek the dean's approval. The record shows that the RVSM Respondent did *not* seek or obtain Gupta's approval, as evinced by: (i) the RVSM Respondent's statement in the form: "No approval sought per my understanding of MSU rules"; (ii) Broad Administrator #3's statement during his interview that Gupta was not involved in the OWP matter and that Broad Administrator #3 and the RVSM Respondent each signed and dated their own signatures, without Gupta's involvement;<sup>61</sup> and (iii) FASA's letter to the RVSM Respondent citing a failure to seek the necessary approvals.

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<sup>58</sup> As stated above, exemptions from the OWP Policy must be in writing and approved by senior administrators. *See supra* at Section V.E.1.

<sup>59</sup> According to a letter dated July 19, 2021, the RVSM Respondent held a 50% time position on an annual (AN) appointment basis beginning August 16, 2021 and ending August 15, 2026.

<sup>60</sup> FASA Administrator told Gupta that the RVSM Respondent was teaching at University #1 in June 2022, and the OWP form the RVSM Respondent completed stated that the RVSM Respondent was teaching the first two lectures in June 2022 (although, confusingly, the form also states elsewhere that the work would begin on July 1, 2022).

<sup>61</sup> During his interview, Broad Administrator #3 stated that, before he received Gupta's email on June 21, 2022, he had a conversation with the RVSM Respondent, who stated that the RVSM Respondent was going to be teaching at University #1. Broad Administrator #3 stated that he told

Specifically, Senior Administrator #1's June 29, 2022 letter to the RVSM Respondent stated:

We also have become aware that you are currently teaching at [REDACTED]. You did not obtain the required approvals prior to engaging in this work, resulting in potential violations of the Dual Appointment, Conflict of Interest, and Outside Work for Pay policies. Your work with this and other employers is not permitted.

Taken together, these events support Gupta's lack of knowledge regarding the RVSM Respondent's plans to teach at University #1 before the RVSM Respondent's June 30<sup>th</sup> resignation became effective.

*Second*, Quinn Emanuel uncovered no evidence to indicate Gupta knew that the RVSM Respondent was performing the outside work in June 2022, until he received the June 21, 2022 email from the FASA Administrator. Although Gupta should have been aware that the RVSM Respondent might engage in such work given Gupta's knowledge of the RVSM Respondent's prior history of teaching at other universities during summer breaks, it was reasonable for Gupta to believe that the RVSM Respondent would either begin such teaching after the June 30<sup>th</sup> resignation became effective or affirmatively notify Gupta and Broad Administrator #3 that the RVSM Respondent planned to begin teaching in June 2022. As indicated above, documents support that the RVSM Respondent communicated the June 30<sup>th</sup> resignation date to Gupta with no mention of any teaching plans prior to or after the resignation date, creating the reasonable inference that the outside work and payment would begin after the RVSM Respondent had left MSU. In any case, it is incumbent upon the employee seeking permission for outside work to obtain the requisite approvals, and there is no evidence Gupta was notified or approached for such approval.

*Third*, Gupta's position was informed by his belief that there was an agreement between the RVSM Respondent and a prior dean and provost authorizing the RVSM Respondent's outside work for pay on a standing basis. Although Quinn Emanuel did not find such written agreement in the materials provided, Quinn Emanuel was able to corroborate that others shared Gupta's understanding that such an agreement existed.

At the same time, there are some weaknesses in Gupta's position. First, it appears that Gupta relied on Broad Administrator #3 for handling administrative matters like OWP forms in Broad Administrator #3's department. Although such delegation in the first instance is arguably reasonable given, for instance, interviewees' statements that outside work for pay requests are

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the RVSM Respondent to submit an OWP form, but that the RVSM Respondent did not do so until about a week later. Broad Administrator #3 explained that although his signature was applied to the form on June 22, he dated this signature June 17, to reflect the date of his conversation with the RVSM Respondent about completing an outside work for pay form.

almost always granted, Gupta was still required to approve such requests under the policy and may have over-delegated his role.

Although Broad Administrator #3 stated that he believed the RVSM Respondent misled him as to the RVSM Respondent's summer plans, he also stated that he was aware that the RVSM Respondent had started teaching at University #1 in June 2022, and asked the RVSM Respondent to turn in the required OWP form. Although the RVSM Respondent agreed to do so, Broad Administrator #3 stated the RVSM Respondent did so about seven to ten days late, after the RVSM Respondent had already started teaching at University #1. However, Broad Administrator #3 stated that he sent the OWP form to Gupta when Gupta requested it at FASA's behest, but Gupta was not otherwise involved with the OWP process.

It also appears that Gupta expressly relied on Broad Administrator #3's misinterpretation of the OWP Policy (that it does not apply if the payment for the outside work is received during an off-duty period) when FASA asked him about the form. Broad Administrator #3's interpretation of the policy upon which Gupta relied, is not supported by the text of the OWP Policy, which makes no such exception for work performed during a duty period with payment received during an off-duty period. While it may have been reasonable for Gupta to rely on Broad Administrator #3 for handling matters such as OWP requests in his department, Gupta's reliance on this misinterpretation of the policy appears misplaced given the express text of the policy. Nonetheless, there is no indication Gupta had actual knowledge of the RVSM Respondent's OWP plans prior to receiving FASA's email, because his approval for the OWP was never sought, and because the RVSM Respondent failed to disclose information regarding the RVSM Respondent's June 2022 teaching plans. Moreover, Gupta's apparent misinterpretation of the policy was immediately remedied when FASA responded to his initial email, and he then facilitated the form being submitted. Thus, it appears unfair to hold Gupta accountable for this violation of the OWP Policy.<sup>62</sup>

## **V. Personnel Actions Taken Against Gupta**

Woodruff took three actions against Gupta, which she characterized as consequences for his failures of leadership: (i) removal from the Broad College dean position; (ii) revocation of Gupta's endowed chair position and refusal to give him another endowed chair upon return to the faculty; and (3) imposition of additional training on mandatory reporting requirements. Each action is discussed in turn.

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<sup>62</sup> In addition to citing the OWP Policy, the August 18 Letter cites the Dual Appointments Policy. During his interview, Broad Administrator #3 stated that the Dual Appointments Policy would not have applied to the RVSM Respondent's teaching at University #1 during June 2022 because the RVSM Respondent was working for University #1 as a "contractor"—i.e., not in an appointed position. Similarly, FASA's case management document reflects that University #1's website listed the RVSM Respondent as a "visiting" professor. As a result, it does not appear that the Dual Appointments Policy applied to the RVSM Respondent's outside work for University #1 in June 2022. Even if the Dual Appointments Policy did apply, Gupta should not be held accountable for the RVSM Respondent's violation of that policy because, as discussed above, Gupta was not aware that the RVSM Respondent was teaching at University #1 until FASA notified Gupta.

## A. Removal From Deanship

### 1. Substantive Justification For Gupta's Departure

#### a. Gupta's Deanship Was An At-Will Position

During his interview, Gupta acknowledged that his position as dean was an at-will position.

Two documents confirm that Gupta's appointment as dean was an at-will appointment. Gupta's dean contract is memorialized in a letter dated May 5, 2015 (the "dean contract"), which he accepted by signing the letter on May 6, 2015.<sup>63</sup> Pursuant to the terms of his dean contract, Gupta's "appointment as dean may be discontinued by the President and Provost *at any time*." Bylaw 2.1.4.5 of MSU's Bylaws for Academic Governance also speaks to the authority to appoint or terminate any dean.<sup>64</sup> Under MSU Bylaw 2.1.4.5, "[t]he appointment of a dean, chairperson, or director, as such, *may be terminated at any time* by resignation or by action of the President upon the recommendation of the Provost."

Thus, there was no limitation on the ability to remove Gupta as dean so long as the reason was not unlawful. During her interview, Woodruff explained that her decision was based on the "totality" of the circumstances rather than any one single rationale stated in the August 18 Letter. Woodruff also stated that even if no formal policy required Gupta to take certain actions, she viewed his inaction regarding several of the stated rationales as leadership failures and/or as illustrative of a lack of judgment. For example, regarding the second stated rationale (that Gupta failed to ask the RVSM Respondent any follow-up questions), Woodruff acknowledged the Reporting Protocol's language about prohibiting "investigat[ion] or attempt[ing] to determine if alleged conduct occurred," but she stated that a leader in that circumstance should have asked "common sense" follow-up questions to "enable" a "positive outcome." MSU's Bylaws and Gupta's dean contract do not impose restrictions on the reasons that Gupta could be removed as dean, meaning that perceived poor judgment or leadership failures could support the removal of Gupta as dean by the President and Provost under MSU Bylaws and his dean contract.

Woodruff stated that deans are the "ultimate compliance officers" of the University, that Gupta had failed Woodruff's "own high administrative standards," and that Gupta "no longer enjoyed" Woodruff's "full faith and confidence." This conclusion could also under certain circumstances support Gupta's removal as dean.

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<sup>63</sup> Gupta was reappointed as Dean of the Broad College via a letter dated June 16, 2020, which increased Gupta's salary but did not change other key terms of his deanship, including the conditions under which he could be removed and the events that would occur upon his return to the faculty.

<sup>64</sup> MSU, "Bylaws for Academic Governance" (April 2022), *available at* <https://acadgov.msu.edu/-/media/assets/academicgovernance/docs/bylaws/most-current-bylaws/bylaws-for-academic-governance-updated-20220422.pdf?rev=6784f1a4167e4742b71274e370d219df>.

b. Gupta's Allegations Regarding Woodruff's Alleged Motive(s)

During his interview, Gupta alleged that Woodruff was motivated to remove him from his deanship based on two potential improper motives: (i) because he was her potential competition to become the next president of MSU; and (ii) based on racial animosity. Quinn Emanuel examined each alleged improper motive.

i. *Removing Competition*

Quinn Emanuel has reviewed the evidence regarding Woodruff's alleged motive to eliminate competition for the presidency. Gupta stated that Woodruff was aware of his ambitions to become the next president of MSU because he told her about these ambitions during his annual review meeting with her, including the one that occurred in Summer 2022. Additionally, according to another interviewee, Stanley had listed Gupta as a potential successor during Stanley's annual review, which was communicated to the Board.

During her interview, Woodruff denied these assertions and said that at the time of Gupta's resignation, the president's position was not vacant, as Stanley had neither been asked to leave MSU nor had he announced his resignation.

Quinn Emanuel uncovered no definitive evidence either supporting or disproving Gupta's allegation regarding improper motives.

Additionally, Woodruff stated that before accepting FASA's recommendation to ask Gupta to leave the deanship, Woodruff discussed alternative personnel actions with senior advisors, including from FASA and the RVSM Expert Advisory Workgroup. Woodruff stated that she raised the idea of Gupta being temporarily suspended from the dean role for six months. As reflected by the below excerpt from a document that Senior Administrator #2 emailed to Woodruff on August 2, 2022, a range of other alternatives for personnel actions were also considered.

1. Removal from an administrative position
2. Termination
3. For FAS, non-leadership without intent
  - Consultation by leaders with faculty or academic staff member
  - Mandatory training on policies such as Relationship Violence and Sexual Misconduct Policy, Anti-Discrimination Policy, University Protocols, Clery Act
4. Notice to personnel file
5. Suspension without pay
6. Reduction in pay
7. Ineligible for merit increase
8. Removal of specific duties

A document that a FASA employee emailed to Senior Administrator #2 on August 2, 2022, which describes several possible alternatives to removing Gupta as dean, states that any of the options that allowed Gupta to remain as dean "sends the wrong message to the community that a failure to



report as a dean, a key and trusted leader, is tolerated at MSU.” Woodruff said she became convinced by her advisors that Gupta “no longer enjoyed [her] full faith and confidence.”<sup>65</sup>

ii. *Racial Bias*

In his interview, Gupta also alleged that Woodruff removed him because of a racial bias against him because he is Indian. Gupta referenced public media accounts of conflicts and criticism Woodruff previously faced as the dean of Northwestern’s graduate school from student groups representing marginalized identities.<sup>66</sup>

Gupta identified two MSU deans whom he alleged were not in a protected class and who were alleged to have committed misconduct but not removed from their deanships. As described above, *see* Section IV, Quinn Emanuel was advised that neither dean was alleged to have violated the Reporting Protocol and OIE did not issue any adverse findings against either dean. The Board thus directed Quinn Emanuel not to further investigate any allegations, grievances, or complaints against these two deans, and Quinn Emanuel accordingly withdrew its request for additional information regarding those deans.

Quinn Emanuel has not seen any evidence to support Gupta’s allegations regarding racial discrimination based on the information the University made available.

## 2. Compliance With Procedural Requirements

In addition to evaluating the substantive rationales for the personnel actions against Gupta, Quinn Emanuel also reviewed the applicable procedural requirements. As a threshold matter, how much process is due turns on whether Gupta voluntarily resigned or whether Woodruff’s request for his resignation constitutes involuntary removal. If Gupta freely and voluntarily resigned, then no further process is required. However, Gupta has claimed that he was involuntarily removed. As discussed below, the factual record indicates that Woodruff no longer wanted Gupta to serve as dean and she stated that she heard nothing in the August 12 meeting that changed her view. As a

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<sup>65</sup> While the Standards of Official Conduct for Senior University Administrators policy makes a general statement that “Administrators at Michigan State University are expected to abide by the highest ethical standards in discharging their responsibilities for the University,” the specific rules set forth in that policy do not appear to apply to Gupta’s conduct for which he was disciplined. The policy sets forth rules such as rules governing conflicts of interest and disclosure requirements for financial interests. *See* Standards of Official Conduct for Senior University Administrators, *available at* [https://hr.msu.edu/policies-procedures/faculty-academic-staff/fas-policies-procedures/standards\\_official\\_conduct.html#:~:text=This%20is%20the%20handbook%20for%20the%20Standards%20of,is%20to%20be%20interpreted%20and%20implemented.%20I.%20PRINCIPLES](https://hr.msu.edu/policies-procedures/faculty-academic-staff/fas-policies-procedures/standards_official_conduct.html#:~:text=This%20is%20the%20handbook%20for%20the%20Standards%20of,is%20to%20be%20interpreted%20and%20implemented.%20I.%20PRINCIPLES).

<sup>66</sup> *The Daily Northwestern*, “‘TGS has fallen short:’ Graduate students send NU administrators letter demanding better treatment of marginalized students, removal of Dean Woodruff” (Mar. 3, 2020), *available at* <https://dailynorthwestern.com/2020/03/03/campus/tgs-has-fallen-short-graduate-students-send-nu-administration-letter-demanding-better-treatment-of-marginalized-students-removal-of-dean-woodruff/>.

result, Gupta appears to have assented to her request that he no longer serve as dean during the meeting, and later attempted to rescind his resignation.

a. Voluntary Resignation Or Involuntary Removal

On August 12, 2022, at 8:00 a.m., Woodruff and Gupta had an in-person meeting in Woodruff's office. Senior Administrator #2 was also present. Woodruff read from a prepared script.

In his interview, Gupta stated that he was not given an opportunity to present his version of events during the meeting and that it was clear that Woodruff was going to remove him even if he did not resign. He stated that at some point in the conversation, Woodruff said something like "I take that as your verbal resignation." Gupta stated that he could not recall whether he nodded or did something else, but that he was then handed three letters, including a resignation acceptance letter.

During her interview, Woodruff stated that she gave Gupta "ample opportunity" to present his case, and that going into the meeting, she had "volition" to determine the personnel actions based on any counter evidence that Gupta might have presented. She stated that Gupta "indicated" that he understood, and she accepted Gupta's verbal resignation.

The following excerpts of the script that Woodruff wrote and used during the August 12, 2022 meeting appear to support Gupta's position that Woodruff had already decided to ask Gupta to resign (and remove him if he declined to resign) and that Gupta was asked to decide whether he would step down as dean immediately during the August 12 meeting.

In conclusion, this list of details illustrates to me that there were multiple opportunities for you to address the inappropriate behavior of [REDACTED], Sanjay, and I must admit that I am deeply concerned about this lapse in judgment in your role as dean.

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**[Let Sanjay respond]**

At this point, I'd like to hear your comments on this matter.

**[TKW responds and clarifies where necessary]**

Potential statement: This is not an investigation. The investigation is complete and culminated in the OIE Mandatory Reporting Failure Memorandum. We do not need to debate the facts.

**[TKW pivots to and discusses leadership responsibility]**

Unfortunately, Sanjay, given your decisions - taken in your role as a dean - I believe this constitutes a serious lapse of commitment to upholding your leadership responsibilities. I can no longer support you as dean. With the concurrence of the President, I ask you to step down as dean, effective immediately.

**[if he steps down]**

Sanjay, I accept your verbal resignation and ask that you tender your formal resignation no later than 8 a.m. on Monday, August 15th. *(hand him the resignation acceptance letter, the return letter, and the operations letter).*

The only other person at the August 12 meeting—Senior Administrator #2—declined Quinn Emanuel’s interview request, so Quinn Emanuel does not have information related to Senior Administrator #2’s direct version of these events. Other evidence, however, could support Woodruff’s position that Gupta voluntarily resigned on August 12. Shortly after his meeting with Woodruff, Gupta sent the below email to his Broad College colleagues (copying Stanley, Woodruff, and another administrator), announcing his resignation on August 12:

Dear Broad College Colleagues –

This is to inform you that I have resigned my position as Dean of the Eli Broad College of Business today. It has been a great privilege and high honor to serve as your dean over the last seven years. I thank each one of you for your unstinting support and collaboration in helping the college aim higher and do better to become one of the best business schools. Together, we have accomplished a great deal but I truly believe that even better days lie ahead.

I wish the College and each one of you the very best of success.

When asked during his interview why he sent this email saying that he had resigned, Gupta stated that he could not explain why he wrote it that way, but that he should have written that he had been “asked to resign.”

Thus, while Quinn Emanuel cannot conclusively determine whether Gupta voluntarily resigned or was involuntarily removed from his dean position, it is apparent that Woodruff did not intend to permit Gupta to remain as dean given her views regarding his conduct, and Gupta complied with her position (and then tried to retract his resignation letter two days later).

b. Woodruff’s Authority

If Gupta was removed from his deanship, then the next question is whether the removal was consistent with MSU procedural requirements. As discussed above, both Gupta’s dean contract and MSU Bylaw 2.1.4.5 required the participation of both the president and provost to remove Gupta from his deanship. Specifically, Gupta’s dean contract states that his “appointment as dean may be discontinued by *the President and Provost* at any time,” and MSU Bylaw 2.1.4.5 states

that the appointment of a dean as such “may be terminated at any time by resignation or *by action of the President upon the recommendation of the Provost.*”

There is no dispute that Woodruff participated in this decision. However, there is an open question as to whether Stanley participated in the removal, or whether Gupta’s removal constituted an action of the President upon the Provost’s recommendation, as required by his dean contract and MSU Bylaw 2.1.4.5, respectively.

During her interview, Woodruff stated that she could have removed Gupta on her own, *i.e.*, without Stanley’s sign off. She stated that the “at will nature” of a dean’s position “gives me ultimate authority” to terminate the deanship *and* to take *any other* personnel actions “without any policies, procedures, or process[.]” apart from removing tenure. This position conflicts with the express terms of Gupta’s dean contract and MSU Bylaw 2.1.4.5, described above, which both call for the president’s participation in the removal decision.

Woodruff stated that although she believed that she could have removed Gupta on her own, she sought Stanley’s input, and he “left” the decision to Woodruff’s “discretion” but was “supportive” of her view that Gupta should be removed from his deanship.

Available evidence supports that Woodruff consulted with Stanley several times about the decision and that he expressed his support. *First*, two interviewees indicated that they believed Stanley was aligned with Woodruff in the decision to remove Gupta from his deanship. *Second*, the script Woodruff read from during the August 12 meeting reflects that Woodruff’s decision to ask Gupta to step down as dean was made “[w]ith the *concurrence* of the President.” *Third*, in a statement published on August 30, 2022, Stanley stated: “Dr. Gupta served in his role as dean at the will of the Provost and she was well within her rights to make this leadership transition. *I fully support this decision* and the process utilized to come to this action.”<sup>67</sup> Stanley declined an interview, precluding Quinn Emanuel from determining whether Stanley’s direct account would show he participated in Gupta’s removal from the dean position as required.

## **B. Return to Faculty Without An Endowed Professorship**

Gupta’s dean contract expressly states that “[u]pon [Gupta’s] return to the faculty, [he] will be appointed as John A. Hannah Professor, Broad Professor, or other available endowed professorship in the Broad College, with research support in effect at that time.”

This letter outlines the conditions for your transition from Dean back to the faculty in the Department of Accounting and Information Systems. Effective, August 12, 2022, you will return to the faculty as a tenured professor, unaccompanied by a named or endowed professorship.

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<sup>67</sup> MSU Office of the President, “President responds to Trustees’ decision to review personnel decision” (Aug. 30, 2022), *available at* [https://president.msu.edu/communications/messages-statements/2022\\_statements/2022-08-30-President-responds-to-Trustees-decision.html](https://president.msu.edu/communications/messages-statements/2022_statements/2022-08-30-President-responds-to-Trustees-decision.html).

Before becoming a dean, Gupta held the Russell E. Palmer endowed professorship, for which he received \$30,000 annually, as highlighted in the excerpt below from Gupta’s 2012 offer letter to become the Associate Dean of MBA and Professional Master’s Programs.

Beginning July 15, the university will annualize your salary at a rate of 11/9ths of the academic year amount, and a \$35,000 administrative increment will be added. An additional \$30,000 will be added for as long as you hold your Palmer Endowed Professorship, which is independent of the Associate Dean role. The Dean’s Office will provide you with additional funds for

When Gupta became dean, he relinquished the Russell E. Palmer endowed professorship, but assumed an endowed position as the Eli and Edythe L. Broad Dean. As of the time he was asked to resign from his deanship, Gupta was receiving \$60,000 annually for his endowed position. This is confirmed by an email from Woodruff to Gupta that was sent in May 2021, as well as pay documentation from May 2022, both shown in the excerpts below.

Dear Sanjay,

Please let this email serve as clarification that your reappointment is in fact as the *Eli and Edythe L. Broad Dean* of the Eli Broad Business College, with financial support consistent with other endowed chairs in the Broad College.

My best,

Teresa

MICHIGAN STATE UNIVERSITY	Additional Payment Desired Pay Date: 05/31/2022	Process Reference Number: 00000782485 Service From: 04/01/2022	Initiator Name: [REDACTED] Service To: 04/30/2022
<b>Pay and Cost Distribution</b>			
PERNR:	00006536		
Employee Name:	Sanjay Gupta		
Wage Type:	1490 - Faculty Overload	Amount: \$60,000.00	
Reason For Payment:	Eli & Edythe L. Broad Dean pay - 2022   1:1 payment		

However, as reflected by the following excerpt from the letter Gupta was given on August 12, 2022, Gupta was not appointed as the John A. Hannah Professor or to any other endowed professorship when he was returned to the faculty:

This letter outlines the conditions for your transition from Dean back to the faculty in the Department of Accounting and Information Systems. Effective, August 12, 2022, you will return to the faculty as a tenured professor, unaccompanied by a named or endowed professorship.

Thus, Gupta was removed from his Eli & Edythe L. Broad endowed chair position and was not given the John A. Hannah Professor endowed chair position (or its equivalent) upon his return to the faculty, as his contract guaranteed.

During her interview, Woodruff stated that she believed that she could return Gupta to the faculty without an endowed position because Gupta’s dean contract did not contemplate his return to the

faculty in the event of misconduct. However, the express terms of the offer letter place no conditions on Gupta's right to be returned to the faculty with an endowed professorship.

Returning Gupta to faculty without an endowed chair may also have violated two MSU policies: (i) the University's Policy on the Revocation of Honors and Awards (the "Revocation Policy")<sup>68</sup>; and (ii) University's Discipline Policy.<sup>69</sup>

*First*, the Revocation Policy allows for the removal of an honor or award, such as an honorific title or endowed position, without additional procedural rights or protections. MSU administrators did not mention the Revocation Policy in their interviews or Woodruff's August 18 Letter but raised it for the first time with Trustees in a meeting well after the personnel actions against Gupta. However, the Revocation Policy does not appear applicable to revoking Gupta's endowed chair position.

The Revocation Policy applies where "individuals have been *adjudicated and confirmed* to have committed misconduct." Revocation Policy at IV (emphasis added). A violation of the Reporting Protocol likely constitutes "misconduct" under the Revocation Policy.<sup>70</sup> However, it is not clear that an OIE investigative memorandum finding a mandatory reporting violation constitutes an "adjudicat[ion]" that the misconduct occurred. Even if the OIE memorandum constituted an adjudication, it seems unlikely that the OIE investigative memorandum alone would constitute "confirm[ation]" of any such adjudication. Rather, the Revocation Policy seems to contemplate a pre-existing finding of misconduct that had been the subject of notice, hearing, and grievance processes as a predicate to also revoking honors and awards without any process or procedure.

The Revocation Policy states that revocation of an honor will "depend[] on the nature and severity of the violation." The Revocation Policy does not specify what kinds of actions are considered sufficiently "sever[e]" as to trigger revocation of an endowed position without a formal process or procedure, and thus, it is unclear whether Gupta's mandatory reporting violation (or other reporting failure violations) would fall within the contemplated level of severity under the Revocation Policy. However, because the Revocation Policy contemplates a review of the facts and circumstances of a violation, it does not mandate a "zero-tolerance" approach to such violations. The Revocation Policy also does not state *who* has the authority to revoke an honor or award, making it impossible to assess whether Gupta's endowed position was properly revoked in accordance with the Revocation Policy.

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<sup>68</sup> Policy on Revocation of Honors and Awards, MSU Faculty Handbook, *available at* <https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/revocation-honors-awards.html>.

<sup>69</sup> *See* Discipline and Dismissal of Tenured Faculty, *available at* [https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/tenure\\_discipline\\_dismissal.html](https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/tenure_discipline_dismissal.html).

<sup>70</sup> The Revocation Policy defines "misconduct" as including, as relevant here, "[v]iolations of university policy, including but not limited to violations of the relationship violence and sexual misconduct policy, anti-discrimination policy, and procedures concerning allegations of misconduct in research and creative activities."

Further, the Office of the Provost, with the approval of the Board, adopted the Revocation Policy on June 1, 2021, *six years after* Gupta had signed his May 2015 dean offer letter and *one year after* he had been reappointed in June 2020. Thus, it would not be reasonable to apply the Revocation Policy retroactively where it conflicts with Gupta’s preexisting dean contract, which was never modified.

Finally, the Revocation Policy “applies only to honorific awards for individuals holding postdoctoral positions, graduate and undergraduate students, not to financial awards.” Revocation Policy at III. Because Gupta’s endowed chair positions included monetary components, his positions would fall outside of the Revocation Policy.

*Second*, it appears that the Discipline Policy likely should have applied to the revocation of Gupta’s endowed chair position(s). The Discipline Policy sets forth detailed procedures “that must be followed before a tenured faculty member may be subject to disciplinary action”—*i.e.* it reflects procedural safeguards and rights awarded to tenured faculty.<sup>71</sup> Two “types” of “disciplinary action” are covered by the Discipline Policy: minor discipline and serious discipline:

*Minor discipline* includes but is not limited to: verbal reprimand, written reprimand, mandatory training, foregoing salary increase, restitution, monitoring of behavior and performance, and/or reassignment of duties; *Serious discipline* includes suspension with or without pay or temporary or permanent reduction in appointment.

The Discipline Policy identifies separate procedural requirements for minor discipline and for serious discipline. “Where both minor discipline and serious discipline are contemplated concurrently, the process for serious discipline should be followed.”<sup>72</sup> Neither the minor nor serious discipline procedures were followed in Gupta’s case.

Because serious discipline “includes suspension with or without pay or temporary or permanent reduction in appointment,” it appears to embrace personnel actions with financial penalties, such as a loss of an endowed position “with research support in effect at that time.”

Woodruff and Senior Administrator #1 both asserted that the Discipline Policy did not apply because Gupta’s endowed chair was revoked in Gupta’s “administrative capacity” only—not in his capacity as a member of the faculty. Woodruff asserted a belief that she could undertake any personnel action against a dean in their “administrative capacity” without application of the Discipline Policy *except* for revocation of tenure itself. In other words, the rights attendant to tenure are inapplicable when the faculty member also has administrative responsibilities. Neither Woodruff nor Senior Administrator #1 identified a University policy to support this distinction or to authorize personnel actions against tenured faculty members in an “administrative capacity”

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<sup>71</sup> User’s Guide: Discipline and Dismissal of Tenured Faculty for Cause Policy, *available at* <https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/documents/user-guide-discipline-dismissal-for-cause.pdf>.

<sup>72</sup> *Id.*

only, so as to avoid the procedural rights otherwise granted to faculty members who have achieved tenure.<sup>73</sup>

The only policy Quinn Emanuel found specifically addressing personnel actions taken against deans is the Standards of Official Conduct For Senior Administrators (“Standards Policy”).<sup>74</sup> The handbook for the Standards Policy provides that “[n]o University policies prescribe procedures which must be followed before deans, directors, or executive managers may be discharged from these positions.”<sup>75</sup> The handbook also states that “[a] serious and intentional or reckless violation of the [Standards] Policy by an Administrator who is also a tenured faculty member could form the basis for that Administrator’s dismissal for cause from the University, but only after the University complies with the Discipline and Dismissal of Tenured Faculty for Cause policy.” Notably absent from the [Standards] Policy, however, is any discussion of other personnel actions taken against administrators such as the denial of an endowed chair or mandatory Title IX and RVSM training, which Gupta was required to undergo. As a result, this Standards Policy does not resolve the applicability of the Discipline Policy to measures that do not pertain to removal from an administrative position but stop short of outright dismissal from the University altogether.

The Discipline Policy is also unclear in certain respects, including as to its scope, and should be clarified. The Discipline Policy does not expressly contemplate the chain of authority for disciplinary actions imposed on tenured faculty members who currently or recently served as deans or in other senior administrative roles. For example, Sections IV(A) and B of the Discipline Policy identify roles for the “unit administrator” and “dean” to play in taking disciplinary actions. They do not discuss who should function in those capacities when the faculty member being disciplined is also the dean or was recently the dean, which could suggest that the Policy did not contemplate discipline against deans or other administrators.

On the other hand, appointment to a dean position does not constitute revocation of tenure or make the dean no longer a faculty member of the University. Rather, Gupta’s dean offer letter references his tenured faculty status. In addition, MSU Bylaw 2.1.2 states that deans “shall be members of the regular faculty.” And MSU Bylaw 1.1.1.1 states that “The regular faculty shall consist of all persons appointed under the rules of tenure and holding the rank of professor, associate professor, or assistant professor, and all persons appointed as librarians.”<sup>76</sup>

Moreover, the enumerated grounds the Discipline Policy lists for discipline or dismissal include “acts of moral turpitude substantially related to the fitness of faculty members to engage in teaching, research, service/outreach and/or *administration*” and “violation of law(s) substantially

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<sup>73</sup> One university official who advised Woodruff in connection with the personnel actions against Gupta also believed that the Discipline Policy did not apply due to a mistaken assumption that Gupta’s endowed chair position did not include a monetary component.

<sup>74</sup> Handbook for the Standards of Official Conduct For Senior Administrators, *available at* [https://hr.msu.edu/policies-procedures/faculty-academic-staff/fas-policies-procedures/standards\\_official\\_conduct.html](https://hr.msu.edu/policies-procedures/faculty-academic-staff/fas-policies-procedures/standards_official_conduct.html).

<sup>75</sup> *Id.* at § VIII.

<sup>76</sup> MSU Bylaws for Academic Governance, *available at* <https://acadgov.msu.edu/bylaws>.



related to the fitness of faculty members to engage in teaching, research, service/outreach and/or *administration*” (emphases added). This language suggests that the policy extends to administrative functions. Additional enumerated grounds such as “acts of discrimination, including harassment, prohibited by law or University policy,” “theft or misuse of University property,” “incompetence,” “refusal to perform reasonable assigned duties,” and “use of professional authority to exploit others,” do not on their face apply only to faculty in their tenured capacities (in contrast to ground number eight—“violation of University policy substantially related to performance of faculty responsibilities”—which expressly pertains only to faculty roles).<sup>77</sup>

The Discipline Policy sets forth procedural requirements for the imposition of serious discipline, including an informal meeting, written notice of the proposed disciplinary action with sufficient detail to allow a response, seven days for the faculty member to file a written response, an opportunity to meet with a disciplinary review panel, and further procedures for such meeting. The Discipline Policy also provides that the faculty member will have the right to grieve disciplinary actions under the Faculty Grievance Procedure, a separate policy. These procedures were not followed when the Administration revoked Gupta’s endowed chair. In addition, there is no indication that the University provided Gupta and other administrators notice that, in assuming an administrative role, they could be subject to personnel actions with financial penalties without a right to any of the procedural safeguards they would otherwise have if they allegedly committed such violations solely as members of the faculty.

### **C. Additional Training**

As described above, the Discipline Policy also sets forth detailed procedures that must be followed in imposing minor discipline on a faculty member. Minor discipline includes verbal or written reprimands, as well as “mandatory training,” as Gupta was directed to complete.

As indicated above, Woodruff explained in her interview that in removing Gupta’s deanship, she could impose any additional personnel actions unilaterally other than removing tenure itself. For the reasons discussed above pertaining to denial of his endowed chair(s), Woodruff’s position appears to lack support in MSU’s written policies.

If the Discipline Policy is invoked, it requires a meeting to discuss the concerns and potential discipline and a right to request consultation with the department/school faculty advisory committee, its chair, or the chair of the UCFA personnel subcommittee before any discipline is

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<sup>77</sup> In being returned to the faculty, Gupta’s salary was reduced. However, it appears that this reduction was done in accordance with the terms of Gupta’s dean contract. That contract provides: “In the event of a shift to regular faculty duties, your salary rate will be adjusted to the average salary rate of the five highest paid professors with tenure on an academic year basis (excluding administrators but including named professors/chairs and University Distinguished Professors) in the Eli Broad College of Business. However, the adjusted salary will be no less than your de-annualized salary.” The return to faculty letter states: “Your salary rate as Dean is \$523,566. After a review of salaries within the Broad College of Business, we have determined that your return salary will be your de-annualized academic year (AY) faculty salary rate of \$428,372.”

imposed. If the administration decides to proceed, then written notice of the discipline must be provided to the faculty member, who is granted seven (7) days to respond in writing. After further consultation and consideration, a decision is issued and provided in writing to the faculty member. In cases of minor discipline, the faculty member is also entitled to grieve the disciplinary actions under the Faculty Grievance Procedure. Since the Administration did not believe the Discipline Policy applied, it did not provide Gupta these procedures when requiring him to complete additional training.

## **VI. Quinn Emanuel’s Analysis Regarding Personnel Actions**

On balance, Gupta’s alleged leadership failures are not based on a clear or unambiguous factual record. Although Quinn Emanuel concurs that Gupta violated the Reporting Protocol, the other alleged leadership failures lack evidentiary and policy support and the factual record OIE and FASA developed includes misstatements, errors, and omissions. The sequence in which Gupta’s mandatory reporting violation was investigated and personnel actions were taken—on an expedited basis, before the underlying RVSM investigation was completed, and before other mandatory reporting violations were investigated—may have hindered the accuracy and completeness of OIE’s investigation and influenced the direction of the underlying RVSM investigation. As it pertains to Gupta, Woodruff’s personnel actions appear to be disproportionate and not appropriately calibrated to the significance (or insignificance) of Gupta’s unreported information to the underlying investigation, the treatment of other comparable cases, and Gupta’s record as a whole.

### **A. The Timing of the Personnel Actions Against Gupta Raises Concerns**

The timing of Gupta’s mandatory reporting failure finding and adverse personnel actions—before the conclusion of the investigation into the RVSM Respondent’s alleged misconduct—may have impacted that investigation and MSU’s ability to apply consistent standards to mandatory reporting failure cases stemming from the RVSM Respondent’s case.

In at least some prior instances, investigative memoranda in mandatory reporting failure cases were issued following the conclusion of the investigation into the underlying reportable misconduct. For example, in an OIE memorandum dated July 1, 2020, the investigator noted that on the date of the memorandum, the investigator had been notified that a Resolution Officer had issued a decision in the underlying case, meaning that “the presentation of this memo should not result in any interference with the process.” In another OIE memorandum dated February 4, 2020, the investigator noted that as of the time of the memorandum, the underlying OIE case had been closed.

According to a senior official, following the issuance of the U.S. Department of Education’s “Dear Colleague Letter,”<sup>78</sup> the University’s policy has been that OIE should operate largely “independently,” meaning that no one else should be able to put a “thumb on the scale” of OIE’s

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<sup>78</sup> Office of Civil Rights, U.S. Dep’t of Educ., “Dear Colleague Letter” (Apr. 24, 2015), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>.

investigations. The official stated that OIE reports up to OGC and that, although OGC may provide OIE with legal advice, OGC should *not* be interfering with OIE’s investigations or findings.

However, it appears that such proscribed intervention occurred here. OIE’s files in the RVSM Respondent case show that OIE began discussing a dismissal of the formal complaint against the RVSM Respondent around August 10, 2022. OIE prepared a draft dismissal on August 15, 2022, which was reviewed and finalized within OIE by August 19, 2022. Meanwhile, Gupta was asked to resign from his deanship on August 12, 2022, and Woodruff sent the Board a letter setting forth her rationale on August 18, 2022. On August 19, 2022, OIE gave FASA notice of the planned dismissal of the RVSM Respondent’s investigation. As reflected in OIE Employee #2’s case notes in the RVSM Respondent’s case file, on August 22, 2022, FASA Administrator—who was also involved in Gupta’s personnel actions—then asked OIE not to close the case:

**Note Entered By**

██████████

**Date**

08/22/2022

**Category**

General

**Title**

Meeting w ██████████

**Details**

requested OIE do not close investigation, rather advised to send another email to the attendees as a result of the change in leadership within dept (new dean, female dean). advised to confirm information with ██████████ and get back with her.

After FASA Administrator asked OIE not to close the RVSM investigation, OIE Employee #2 entered two more notes on August 25, 2022, reflecting that an OGC attorney reviewed the dismissal and then recommended that the case remain open:

**Note Entered By**

[REDACTED]

**Date**

08/25/2022

**Category**

General

**Title**

[REDACTED] Meeting - Do Not Send Memo/Dismissal

**Details**

[REDACTED] Request: [REDACTED] agreed not to send a second email. advised [REDACTED] not to send the information to the unit at this time. [REDACTED] and [REDACTED] would like to review memo and dismissal before sending out. writer sent a copy this date to [REDACTED] and [REDACTED]

**Note Entered By**

[REDACTED]

**Date**

08/25/2022

**Category**

Delay

**Title**

Meeting w [REDACTED] [REDACTED] and [REDACTED] - NO LONGER DISMISSING

**Details**

after review of the investigative memo [REDACTED] believes case needs to be fully investigated. discussed evidence currently available is all that we would have discusses potentially sending add'l outreach to [REDACTED] due to her intoxication level however ultimately determined credibility would be determined at the RO stage. jurisdiction is title IX so we do cannot simply write a report without sending to a hearing. however as we cannot tie information from complaint back to claimant needs to be amended to no longer include sexual harassment as no report of that to cl [REDACTED] reportedly grabbed. discussed amending the formal complaint as not all of it pertains to the claimant who was physically touched. determined no need to update as it does not specifically lay out what reported conduct occurred with what claimant NEXT STEPS: - send claimant outreach to [REDACTED] (potential Claimant at the table with several of our witnesses but has not been mentioned) [REDACTED] Do not need to hold next steps until hearing from CI as it can be easily amended. 2. send updated NOI for Respondent to [REDACTED] before sending 3. Include all witnesses in the IR for context of the Respondent's intoxication level 4. no need to send cl information to [REDACTED]

Thus, it appears as though OGC asked OIE not to close the RVSM investigation, which similarly is at odds with the independent authority OIE was given, as discussed above. OGC was also involved in a decision not to amend the formal complaint against the RVSM Respondent, even though the formal complaint may have erroneously conflated the unidentified claimants, including by alleging sexual harassment against one claimant who had not been touched.

Had all potential mandatory reporting failures resulting from the RVSM Respondent's case been handled concurrently (and after the conclusion of the underlying case of the RVSM Respondent),

there may have been more consistency in the results. As discussed further below, in addition to Gupta, several other employees were investigated for mandatory reporting failures resulting from the RVSM Respondent's case. In September 2022 (after the personnel actions against Gupta), one of those employees was found to have committed a mandatory reporting failure, and this employee received only additional training as a result. Further, two other employees who reported information about the RVSM Respondent over four months after learning this information were not investigated for mandatory reporting failures. It is unknown how many other mandatory reporters may have known about the RVSM Respondent's behavior but never reported it.

## **B. The Personnel Actions Appear Disproportionate In Context**

As explained above, there are factual and policy issues with all five leadership failures upon which the Administration relied. In Quinn Emanuel's view, there are additional mitigating circumstances that might have led to less significant personnel actions if they had been presented accurately and completely to the Administration.

### **1. Factual Discrepancies**

There are potential weaknesses in the factual support for the Administration's findings of leadership failures, including the finding that Gupta violated the Reporting Protocol (although Quinn Emanuel concurs in this finding). Had the Administration been presented with the full and accurate factual record, it may have reached a different conclusion regarding the severity of the infraction and the appropriate consequences.

*First*, the Administration relied in part on a presentation of facts that implicitly misstated the chronological sequence of key events. OIE's investigative memorandum and the FASA case management document do not assign dates to Gupta's conversations with Broad Administrator #1, Broad Administrator #2, and the RVSM Respondent, but they are presented in reverse chronological order in both documents. This may have contributed to Woodruff's stated misimpression that Gupta first learned about the RVSM Respondent's alleged misconduct directly from his conversation with the RVSM Respondent, making him the only faculty member who knew about the RVSM Respondent's alleged misconduct, which she cited as a significant factor in her assessment of Gupta's failure to report. In her interview, Woodruff stated that she believed that when the RVSM Respondent reported to Gupta, Gupta had "the primary information" that "no one else" had at that moment.

*Second*, the FASA case management document states that during the June 20, 2022 meeting, Gupta stated that students made reports to him about the RVSM Respondent's alleged misconduct at the Gala. However, Quinn Emanuel did not uncover evidence corroborating that any students reported to Gupta. To the contrary, the OIE report, which indicates that it considered "all the collected information," did not state that Gupta heard information from students, suggesting that OIE did not uncover evidence that students told Gupta about the alleged misconduct. And the only participant in the June 20, 2022 meeting who interviewed with Quinn Emanuel, Senior Administrator #1, stated that Senior Administrator #1 did not know of any students reporting to Gupta. This means that in determining the appropriate course of action for Gupta's mandatory reporting failure, Woodruff likely relied on an inaccurate narrative in which students directly

confided in Gupta, and he failed to report their allegations of the RVSM Respondent's alleged misconduct to OIE.

*Third*, Woodruff stated during her interview that she expected a higher level of judgment from Gupta because of his position as dean. However, the Reporting Protocol does not expressly create any elevated level of reporting duty for those in leadership positions. To the extent that the Administration held Gupta to a higher standard of reporting, that higher standard is not supported by the Reporting Protocol or other documents Quinn Emanuel reviewed.<sup>79</sup>

*Fourth*, Woodruff stated that her primary goal in evaluating Gupta's actions was "zero tolerance," but "zero tolerance" is not codified in either the RVSM & Title IX Policy or the Reporting Protocol. Relatedly, Woodruff's statement regarding the concern of student safety is in tension both with a FASA email indicating that few students were remaining on campus after the Gala, *see* Section V.C, and the fact that the RVSM Respondent's current employer was not notified of the December 5, 2022 Resolution Officer's finding against the RVSM Respondent, thereby potentially jeopardizing the safety of students writ large.

*Fifth*, OIE's investigative memorandum—upon which the Administration relied—contains several statements regarding the information that was shared with Gupta that appear to be inconsistent or unclear. For example, the memorandum concludes that "two of Gupta's staff reported the behavior in which [the RVSM Respondent] engaged in was sexual in nature." However, the body of the memorandum only reflects that *one* staff member—Broad Administrator #2—"reported the sexualized behavior to Gupta." Meanwhile, as reflected by the following excerpt, Broad Administrator #1 claimed to have reported only the following conduct to Gupta:

██████████ stated he did not speak directly with any of the students who witness ██████████ behavior at the MBA Gatsby Gala. Rather, he was notified of the behavior by ██████████. ██████████ recalled he could not say definitively that he used ██████████ name when he reported to Gupta. However, he reported to there was inappropriate behaviors by a "faculty member". Specifically, that the faculty member dancing inappropriately and said behavior would be reported to OIE.

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<sup>79</sup> While the Standards of Official Conduct for Senior University Administrators policy makes a general statement that "Administrators at Michigan State University are expected to abide by the highest ethical standards in discharging their responsibilities for the University," the specific rules set forth in that policy do not appear to apply to Gupta's conduct for which he was disciplined. The policy sets forth rules such as rules governing conflicts of interest and disclosure requirements for financial interests. *See* Standards of Official Conduct for Senior University Administrators, available at [https://hr.msu.edu/policies-procedures/faculty-academic-staff/fas-policies-procedures/standards\\_official\\_conduct.html#:~:text=This%20is%20the%20handbook%20for%20the%20Standards%20of,is%20to%20be%20interpreted%20and%20implemented.%20I.%20PRINCIPLES](https://hr.msu.edu/policies-procedures/faculty-academic-staff/fas-policies-procedures/standards_official_conduct.html#:~:text=This%20is%20the%20handbook%20for%20the%20Standards%20of,is%20to%20be%20interpreted%20and%20implemented.%20I.%20PRINCIPLES).

Further, although OIE’s investigative memorandum concludes that “two of Gupta’s staff reported . . . that [the RVSM Respondent] may have inappropriately touched a student or students,” the body of the memorandum reflects that only one reporter—Broad Administrator #2—told OIE that the RVSM Respondent “may have touched one of [the students].” As reflected by the excerpt directly above this paragraph, OIE’s investigative memorandum states that Broad Administrator #1 told Gupta only about inappropriate dancing.

It is also not clear from OIE’s memorandum that Broad Administrator #2 conveyed the RVSM Respondent’s possible touching of a student to Gupta, or whether the possible touching was simply what Broad Administrator #2 knew about the alleged misconduct at the Gala and conveyed that information independently to OIE:

The day after reporting to ██████████ ██████████ received a phone call from Dean Gupta while driving home from campus.<sup>6</sup> ██████████ estimated the call lasted between five (5) and seven (7) minutes. Gupta had contacted him to ask questions about what had happened at the Gala as it had been reported to him by ██████████ ██████████ stated he participated in the Gala, but he was not at the event at the time of the reported conduct. However, it was reported to him by several students that Respondent was “behaving inappropriately to students” after faculty had left.<sup>7</sup> ██████████ stated it was his understanding ██████████ was the only faculty member remaining and that ██████████ was dancing “suggestively” with students and may have touched one of them. ██████████ explained students reported ██████████ would approach several students, begin dancing with them, and they would ask ██████████ to stop. Each time ██████████ was asked to stop ██████████ did and would leave the area. However, ██████████ continued this behavior throughout the night.

In written questions that were sent to OIE Employee #2, Quinn Emanuel asked, “Did [Broad Administrator #2] say this was the same description [Broad Administrator #2] gave to Dr. Gupta? Or was [Broad Administrator #2] independently describing [the RVSM Respondent’s] conduct to OIE?” and “Did [Broad Administrator #2] specifically say [Broad Administrator #2] told Dr. Gupta about the possible touching?” OIE Employee #2’s written response, sent by counsel, does not directly answer either question: “[OIE Employee #2] has reviewed the OIE Mandatory Reporting Failure Investigative Memorandum and related materials and believes the Memorandum and related materials to be an accurate description of [OIE Employee #2’s] activities related to said investigation. Based on the information presented to [OIE Employee #2], OIE determined that Sanjay Gupta violated the mandatory reporting obligations pursuant to the RVSM & Title IX Policy.”

*Sixth*, during his interview, Gupta asserted that he made separate calls to Broad Administrators #1 and #2 on the night of August 11, 2022—the day before Gupta’s August 12 meeting with Woodruff—and both Broad Administrators #1 and #2 purportedly confirmed during those calls that they had not disclosed any alleged sexual misconduct to Gupta. An email that Broad Administrator #1 sent to himself the following day, August 12, 2022, corroborates that Broad Administrator #1 had such a phone call with Gupta. The email states that “Sanjay called at

7:17pm” and he “Wanted to sync on” “1. My annual review” and “2. HIS Oie case” [sic]. Broad Administrator #1 stated that Broad Administrator #1 had deliberately described the alleged misconduct to Gupta in a manner so as *not* to trigger a mandatory reporting obligation for Gupta:

Sanjay then asked for help with his oie claim. He was found guilty, and accused me and ██████ of telling oie that we told oie that we told Sanjay that ██████ had sexually misbehaved with students. I explained to Sanjay:

"I will go to bat for that, the same way I did when they accused me-- I would pull the notes from the call and again explain exactly what was said at what time and to whom. I was very intentional on not having you be a mandatory reporter, and so I spoke very carefully with you. When oie contacted me, I was exceptionally careful to make sure they understood that I know the policy as well as they do, and so they should back off when I tell them that I was deliberate in keeping Sanjay immune."

I also explained, explicitly: " how do you want me to help? If I call them, they are going to say: SANJAY BLACKMAILED ██████ threatened his ELIGIBILITY FOR RAISES AND EVEN HIS JOB---RIGHT SANJAY?"

He said "of course you shouldn't do that, but can you believe..." Sanjay proceeded to explain to me how guilty he was.... because his defense was that he couldn't be helpful so didn't bother to file a claim. I told him: "Sanjay, I told you exactly what to be careful for when I first learned about this. Because I was very careful from the first time I talked to you about this, I didn't want you to have to get involved!"

Finally I said: look--I'll do you a FAVOR: I'll send you the email oie sent me, apologizing for having screwed up so bad. Maybe you can use that in your defense with the provost tomorrow at 8am... 🙌

This email is inconsistent with the OIE memorandum on which the Administration relied for the August 12, 2022 meeting—namely, that Broad Administrator #1 had disclosed to Gupta that the RVSM Respondent’s alleged behavior constituted sexual misconduct. Because Broad Administrator #1 declined Quinn Emanuel’s interview request, Quinn Emanuel was unable to ask Broad Administrator #1 further questions about what specific information Broad Administrator #1 reported to Gupta.

Broad Administrator #2 also declined Quinn Emanuel’s interview request via email, so Quinn Emanuel was unable to ask Broad Administrator #2 about the information he reported to Gupta, what he told OIE about what he reported to Gupta, and whether he spoke with Gupta on August 11, 2022, and, if so, what they discussed. Quinn Emanuel was forwarded an email in which Broad Administrator #2 declined the interview request. The following is a screenshot of the body of that email.

Thanks for your email. I will decline the interview request. My statements to OIE are complete and accurate, and I stand by them.

Because the OIE investigative memorandum does not clearly delineate what information Broad Administrator #2 learned about the alleged misconduct from witnesses and what information he shared with Gupta, it is difficult to say which statements Broad Administrator #2 intended to stand by. Further, although Broad Administrator #2 stated that his statements to OIE were complete and accurate, Woodruff and another senior official confirmed that individuals OIE interviews are not given an opportunity to review and verify the accuracy of the OIE report or interview write-up. This suggests that Broad Administrator #2’s email was meant to indicate that he stands by what he told OIE, and not how OIE documented his statements in its memorandum, which he would not have seen. As Broad Administrator #2 declined Quinn Emanuel’s interview request, Quinn Emanuel was unable to obtain Broad Administrator #2’s direct account of what he reported to Gupta, including whether he told Gupta that the RVSM Respondent may have touched one or more students.



*Seventh*, although Quinn Emanuel was able to analyze the facts based on interviews and an extensive documentary record, the factual record is nevertheless incomplete. Additional witnesses may have provided additional relevant information.<sup>80</sup> In particular, Quinn Emanuel would have sought additional detail from OIE regarding the following:

- Clarifying and confirming what Broad Administrators #1 and #2 told Gupta about the RVSM Respondent's conduct versus what they communicated to OIE;
- Asking why Gupta's information was not included in the RVSM Respondent's investigative file or report if, as the Administration stated, the information was probative of the RVSM Respondent's case.
- Details on the circumstances regarding OGC and FASA asking OIE not to dismiss the investigation of the RVSM Respondent.
- Whether the RVSM Respondent discussed the RVSM Respondent's conduct at the Gala with other MSU faculty or staff.
- The four additional June 20, 2022 meeting participants (other than Senior Administrator #1, who did participate in an interview) for an account of what Gupta said at the June 20, 2022 meeting, including whether he admitted that he should have filed a report with OIE and whether he suggested students had directly reported the RVSM Respondent's conduct to him.
- Senior Administrator #2 for a direct account as to what Woodruff and Gupta said during the August 12, 2022 meeting including whether Gupta voluntarily resigned, whether he had a meaningful opportunity to present his perspective, and whether Gupta allegedly stated that he told the RVSM Respondent "I must let you go."

## **2. Gupta's Case Is Inconsistent With Historical Precedents**

There appear to be differences between the personnel actions taken against Gupta and others involved in mandatory reporting failure cases. Quinn Emanuel was provided access to redacted OIE memoranda for nineteen cases from 2018–2022 where a mandatory reporting failure was found (not including Gupta), as well as documentation of the personnel actions taken in each case. The documentation reflects no record of discipline being imposed in eight of the nineteen cases where a mandatory reporting failure was found. In nine of the eleven cases where discipline *was* imposed, the documentation reflects that the respondent was either directed to receive verbal counseling or to complete additional training on the Reporting Protocol, which is the same discipline recommended in the Gupta OIE memorandum here. Because no one from OIE agreed to a live interview with Quinn Emmanuel, the firm does not have insight into why OIE often recommends training for those who commit a mandatory reporting failure, or why those recommendations appear to be commonly accepted by those responsible for imposing discipline. In the remaining two cases, one respondent merely received a verbal warning in the employee's

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<sup>80</sup> Through counsel, OIE Employee #2 agreed to answer written questions from Quinn Emanuel. Quinn Emanuel provided questions to OIE Employee #2's counsel and was offered an opportunity to send additional questions. However, the answers to the first set of questions were largely non-responsive or directed Quinn Emanuel to other MSU departments or staff, so further back and forth did not seem productive.

file for twelve months and the other received a three-day suspension. Several of the respondents in those cases claimed they did not understand that the Reporting Protocol required them to report third-hand information or information that others had already reported. None of the nineteen cases involved a dean-respondent.

Quinn Emanuel also considered the discipline of two MSU administrator-respondents: MSU's Former Provost, June Youatt ("Youatt"), and MSU's Former Associate Provost and Associate Vice President for Academic Human Resources, Terry Curry ("Curry"), which were referenced by Woodruff as comparable mandatory reporting failure cases in her interview. Both cases were publicized in MSU's September 1, 2020 Report of Employee Review.<sup>81</sup> MSU undertook this Report of Employee Review after entering into a resolution agreement with the United States Department of Education, Office for Civil Rights.<sup>82</sup> That agreement "outlined numerous actions and requirements that MSU [had to] . . . take," including "[r]eview[ing] the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by either Lawrence Nassar or William Strampel and failed to take appropriate action in regard thereto."<sup>83</sup>

According to the report, Strampel, a former MSU dean, "was convicted of two counts of willful neglect of duty for (i) allowing Nassar to continue to see patients during the pendency of the 2014 Investigation, and (ii) failing to enforce protocols resulting from the 2014 Investigation" as well as a "common law offense of misconduct of a public official, a felony."<sup>84</sup> Among the individuals the report reviewed were Youatt and Curry. At the time of the September 1, 2020 report, Youatt had "resigned her administrative role of Provost," had "completed a six-month sabbatical leave," was "currently completing a six-month research leave that ends November 15, 2020," would then "serve a one-year terminal consultantship with such duties determined by International Studies and Programs," and would "retire from MSU effective December 31, 2021."<sup>85</sup> Curry "resigned his administrative role of Associate Provost and Associate Vice President for Academic Human Resources," would "serve a one-year terminal consultantship with such duties determined by the Provost," would then "begin a six-month research assignment," and would then "retire from MSU effective January 4, 2022."<sup>86</sup>

During her interview, Woodruff acknowledged that these cases were not perfectly analogous to each other or Gupta's case. Indeed, Youatt and Curry's fact patterns differ from Gupta's for at least two reasons. *First*, despite learning about Strampel's alleged misconduct, Youatt reappointed

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<sup>81</sup> MSU, "Report of Employee Review" (Sept. 1, 2020), *available at* [https://msu.edu/ourcommitment/\\_assets/documents/strampel-ocr-report-sept-2020](https://msu.edu/ourcommitment/_assets/documents/strampel-ocr-report-sept-2020). Quinn Emanuel relies on the facts as stated in the Report of Employee Review.

<sup>82</sup> *Id.* at 1.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 9.

<sup>85</sup> *Id.* at 6 n.4.

<sup>86</sup> *Id.* at 6 n.5.

Strampel as dean<sup>87</sup> (and Curry participated in that process).<sup>88</sup> Removal from their positions was thus necessary to ensure that they were no longer involved in appointment decisions. *Second*, the Report of Employee Review does not reflect that either Youatt or Curry had knowledge that anyone had already reported certain allegations of misconduct to OIE, so their failure to report effectively prevented OIE and/or the University from having any contemporaneous knowledge of the alleged sexual misconduct.<sup>89</sup> In contrast, Gupta’s failure to report did not prevent OIE or the University from learning about the RVSM Respondent’s conduct, he was told by Broad Administrators #1 and #2 that they were filing reports with OIE, and he openly provided the information he had when OIE contacted him.

Given the factual and policy issues with each of the stated rationales for personnel actions against Gupta, it appears that the personnel actions taken against Gupta were materially different from these cited precedents for mandatory reporting failures.

### **3. Gupta’s Case Is Inconsistent With Contemporaneous Mandatory Reporting Failure Cases**

There appears to be a lack of consistency in how Gupta’s mandatory reporting failure was treated compared to other employees’ failures to report in the same underlying RVSM case. During her interview, Woodruff stated that she was unaware that there had been other mandatory reporting failure investigations or violations arising from the matter concerning the RVSM Respondent. In fact, there were several. Employee #1 was found to have violated the Reporting Protocol on September 19, 2022, and Employee #1’s only disciplinary sanction was a requirement to complete additional training. OIE’s investigative memorandum in that case reflects that, like Gupta, Employee #1 expressed confusion over the fact that the Reporting Protocol requires reporting even where a prior report has already been filed by another reporter.

Two other individuals, Employee #2 and Employee #3, did not file reports regarding information they had learned about the RVSM Respondent’s alleged misconduct until September 2022, *four months* after they heard the information in May 2022.<sup>90</sup> Quinn Emanuel was informed that as of March 13, 2023, OIE had not opened mandatory reporting failure investigations against either Employee #2 or Employee #3. In their reports, both Employee #2 and Employee #3 expressed confusion as to whether they were required to file reports given that they had only learned about the incident from others and knew that others had already filed reports with OIE. Specifically, Employee #3 stated to OIE that Employee #3 delayed filing the report until September 19, 2022, because “[Employee #1] forwarded me [Employee #1’s] OIE report today, 9/19/22 where I learned

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<sup>87</sup> *Id.* at 29–31.

<sup>88</sup> *Id.* at 25–27.

<sup>89</sup> *See id.* at 25–31.

<sup>90</sup> Employee #2 did not report to OIE because when Employee #2 first heard that the RVSM Respondent “was dancing with students and generally acting unprofessional,” Employee #2 was not “aware [the RVSM Respondent] had done anything sexually inappropriate”; rather, Employee #2 surmised that the RVSM Respondent “had made a fool of [the RVSM Respondent’s self] in front of everyone by being too drunk.”

that MSU’s policy is that all staff and faculty are required to report even if you know that the incident has been reported by leadership.” Similarly, Employee #2 reported to OIE that “I received written confirmation from my supervisor on May 3rd that MSU was aware of what happened and were already going through the proper process of review .... I was advised, however, to make a report should any new information come to my attention – which, it never did.”

#### **4. Gupta’s Information Did Not Alter OIE’s Investigation Or Result**

Although Woodruff emphasized in her interview that Gupta had a “profound” voice that could have changed the outcome if he had reported to OIE, this assumption is not supported by OIE’s actions when it learned Gupta’s information on June 22, 2022, or by any other evidence that was available to Quinn Emanuel.

Quinn Emanuel agrees that Gupta should have reported to OIE. In particular, as discussed above, Gupta’s conversation with the RVSM Respondent about the Gala should have been reported as new information because it was a direct admission from the alleged perpetrator.

Nonetheless, it appears that the delay in Gupta providing information to OIE until June 22, 2022, did not hinder OIE in its underlying investigation against the RVSM Respondent because OIE did not deem Gupta’s information to be relevant enough to include in its case file for the RVSM Respondent’s investigation. The RVSM Respondent’s admission to Gupta that the RVSM Respondent drank too much and was very sorry for the RVSM Respondent’s conduct was not referenced in the formal complaint OIE issued on July 28, 2022, which constituted the official commencement of an investigation into the RVSM Respondent’s conduct and occurred after Gupta made his disclosure to OIE.

Even with the benefit of Gupta’s information, OIE considered dismissing the formal complaint against the RVSM Respondent in August 2022. Additionally, Gupta’s information was not presented as evidence in OIE’s final investigative report, at the RVSM Respondent’s hearing, or in the Resolution Officer’s ultimate decision on December 5, 2022. Among other findings, the Resolution Officer issued findings with respect to the RVSM Respondent’s intoxication. In particular, the Officer stated that a student witness reported that the RVSM Respondent was “heavily” intoxicated and was stumbling and walking with a loose gait. That student did not observe the RVSM Respondent consume alcohol. However, two other student witnesses “corroborate[d]” the account of the RVSM Respondent’s intoxication. The Officer remarked that “there is no evidence in the record regarding how much alcohol [the RVSM Respondent] consumed,” but there was sufficient evidence to conclude that the RVSM Respondent was intoxicated. Thus, the ultimate findings were consistent with the RVSM Respondent’s admission to Gupta, but the direct evidence of the RVSM Respondent’s admission (i.e., the information Gupta had) was omitted from the investigative record of OIE.

Thus, although Quinn Emanuel has opined that Gupta’s information *should* have been reported and *should* have been considered by OIE, OIE appears to either have reached a different conclusion about the weight of Gupta’s information or otherwise failed to include it. Either way, as a practical matter, this undercuts the Administration’s conclusion that Gupta’s failure warranted serious personnel actions. OIE had Gupta’s information at every significant point in the RVSM Respondent’s case and did not use it.

## 5. The Administration Did Not Consider Gupta’s Record As A Whole

The Discipline Policy states that in “certain circumstances, it may be appropriate to consider the faculty member’s record as a whole when contemplating the imposition of disciplinary action.” During her interview, however, Woodruff stated that she did not consider Gupta’s prior track record when he was disciplined.

Gupta’s record as a whole might have weighed against such significant personnel actions. Prior to this incident, Gupta had never been investigated for violating the Reporting Protocol or the RVSM & Title IX Policy. During his interview, Gupta stated that he had diligently reported alleged misconduct that he learned about from potential claimants in at least two other incidents. *First*, Gupta stated that he reported information to OIE in 2019 that he had learned from the dean of a foreign business school, who shared with Gupta concerns about alleged sexual misconduct of a Broad College faculty member during a visit to MSU. *Second*, Quinn Emanuel uncovered documentary evidence that Gupta had reported another incident to OIE in July 2022 regarding certain conduct involving a non-MSU professor.

Multiple interviewees—including a previous RVSM claimant—stated that Gupta had a track record of taking RVSM issues seriously. Notably, a claimant in a prior OIE investigation involving a faculty member stated that Gupta was highly supportive of the claimant and took actions to protect the claimant from the faculty member even when OIE initially issued a finding of no violation (OIE subsequently reversed its initial determination and found that the faculty member had violated the RVSM & Title IX Policy). In an email, the claimant stated:

At the time of my case (2019), then Dean Gupta could not have been more supportive of me, as a claimant, nor taken the allegations of RVSM behaviors which I made against a [REDACTED] faculty member, or the entire OIE process, more seriously. His support was critical to removing me from an extraordinarily difficult situation, and to ensuring me a comparable position in the Broad College. This was particularly crucial as an academic specialist without the protections of tenure or other job “guarantees.” Dr. Gupta’s actions as the college’s leader ensured the faculty member who was the respondent in my case was held accountable for his actions, both prior to OIE issuing a finding in my favor (but in which OIE did find certain behaviors/incidents had occurred), and after my case was re-opened and a finding of violation was issued.

Although Administration officials argued that Gupta was not responsive until the matter became public, two faculty members involved with the matter stated in interviews that Gupta acted promptly and to the greatest extent of his authority to protect the claimant throughout the investigation of the alleged misconduct, including giving the claimant a new position and moving the claimant out of the office from the alleged wrong-doer.

During his interview, Gupta stated that through his involvement with these prior cases, he learned that it is difficult for conduct to meet Title IX’s sexual harassment standard of “persistent, severe, and pervasive,” which informed his view that something like the “inappropriate” behavior of the RVSM Respondent on one night would not meet the standard.

## 6. Gupta Did Not Act With Bad Intent Or Malice

There is no evidence that Gupta acted with bad intent or malice in failing to report the RVSM Respondent’s conduct to OIE. In at least some of the prior cases where OIE found a mandatory reporting failure, OIE took into consideration the respondent’s lack of malice or intent to violate the Reporting Protocol.

Gupta openly volunteered his knowledge of the RVSM Respondent's alleged misconduct during the June 20, 2022 meeting. When OIE Employee #2 reached out to him on June 22, 2022, OIE Employee #2 stated that "[I]t is my understanding you would like to report information you have in reference to the . . . case involving faculty Respondent, [the RVSM Respondent]," and Gupta readily accepted the invitation and spoke with OIE Employee #2 later that same day. Moreover, several interviewees stated that Gupta and the RVSM Respondent were not particularly friendly, undermining the theory espoused by certain MSU employees that Gupta intentionally covered up the RVSM Respondent's alleged misconduct based on personal friendship or loyalty. It appears that Gupta's failure to report was not intentional; rather, Gupta either misinterpreted his duty under the Reporting Protocol or failed to appreciate the import of the RVSM Respondent's admissions to him in connection with the OIE investigation.

## **7. Gupta's Misinterpretation Of The Reporting Protocol Is Not Uncommon**

Gupta's misinterpretation of the Reporting Protocol appears to be shared by others in the University community.

Senior Administrator #1 stated during his interview that there are no limits to the reporting duty, no matter how far removed the source of information is. The text of the Reporting Protocol supports this position, making no exception to the mandatory reporting duty for re-reporting of information learned third-hand, fourth-hand, or beyond.

However, Gupta stated that there is widespread confusion among mandatory reporters as to whether and when reporting is required in circumstances other than where the reporter directly witnesses the alleged misconduct or hears about the alleged misconduct from a victim. During his interview, Gupta stated:

It's my firm belief there are many instances around campus where people have not re-reported what they heard. If that's the case and we're interpreting that everyone has to report, there are multiple reporting failures around the institution.

Quinn Emanuel found support for Gupta's statement. Several of the MSU faculty members whom Quinn Emanuel interviewed expressed confusion over how far the reporting duty extends. For instance, Faculty #2 stated that while it is clear that a mandatory reporter must report information learned directly from a claimant, it is "ambiguous" as to whether a mandatory reporter must report information that someone else says they "heard or saw." Faculty #3 stated that it is not clear whether a mandatory reporter must report information about an alleged violation based on "rumor" or "hearsay," *i.e.*, information from someone who was not present for the alleged violation. Additionally, in another, unrelated mandatory reporting failure case where a violation was found and additional training was imposed, the OIE Investigator wrote, in a memorandum dated August 2, 2022 (the same date that Gupta's memorandum was issued), "It is not uncommon for mandatory reporters to be unaware that they are required to submit duplicate reports."

In addition, according to OIE's record of contact for its July 6, 2022 interview of Broad Administrator #1, Broad Administrator #1 stated that when he called OIE to report the RVSM Respondent's alleged misconduct, Broad Administrator #1 asked OIE for instructions as to who

else in Broad Administrator #1's department would need to file a report as well; this suggests that Broad Administrator #1 did not believe it was clear that others who had heard about the incident needed to also report it. According to one senior official, the only instance where a mandatory reporter need not file a report is if OIE has informed that mandatory reporter directly that a report already has been made.

### C. Messaging Regarding The Personnel Actions

During his interview, Gupta expressed dismay that MSU's statements about his departure "led to the press articles talking about Larry Nassar and Sanjay Gupta in the same article," citing this as a significant harm MSU has inflicted upon him and his reputation.

MSU issued a media statement regarding Gupta's departure on August 12, 2022: "Former Dean Gupta resigned amid concerns about his leadership of the college and also a failure to report under our mandatory reporting policies"; "[t]hose who take on leadership roles at MSU are expected to conduct themselves with careful and consistent attention to integrity and professionalism. This leadership transition is the result of poor administrative oversight, including a failure to adhere to our mandatory reporting guidelines." This message implies that Gupta lacked integrity or professionalism and was "poor" in his administrative oversight.

The MSU statement went further: "Our recent institutional history underscores the significance of a failure to report and the devastating impact it can have on individuals across our campus and beyond. It is incumbent upon our leaders to understand their reporting responsibilities to further a safe, welcoming space for all students, employees and guests." Gupta has claimed this was an implicit reference to Larry Nassar; one might argue that it suggests that Gupta's failure to report had a similar "devastating impact" on the safety of students, employees, and guests as the failure of MSU employees to report Larry Nassar.

Gupta appears to be correct that certain media outlets understood the MSU statement to be implicitly referencing the Larry Nassar case in connection with his case. For example, the *Lansing State Journal* reported on the MSU statement on August 30, 2022, and stated: "MSU officials pointed to the Larry Nassar scandal and other instances of sexual misconduct at MSU to highlight the importance of mandatory reporting."<sup>91</sup> Gupta, through his attorney, has claimed that this messaging led to Gupta receiving unsolicited and inflammatory messages, including one from an MSU employee who stated: "Not only will your legacy be failing victims of abuse, but also profoundly damaging the entire University. Congratulations, you are the new Larry Nassar."

In Quinn Emanuel's view, the University should be sensitive to the messages it sends regarding personnel actions against its faculty members.

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<sup>91</sup> *Lansing State Journal*, "MSU trustees to investigate administration's decision to force dean out" (Aug. 30, 2022), available at <https://www.lansingstatejournal.com/story/news/local/2022/08/30/michigan-state-university-dean-sanjay-gupta-removal-investigation-broad-college-of-business/65465084007/>.

## **VII. Policy Recommendations**

Based on its internal review, Quinn Emanuel makes the following policy recommendations.

### **A. Refining The Notice Requirement And Coordination Between OIE And FASA Regarding Reports Of RVSM And Title IX Violations By MSU Employees Including Imposing A Three-Day Notification Deadline**

OIE is responsible for investigating reports of violations of the RVSM & Title IX Policy, including reports of violations by MSU employees. Unit administrators are responsible for determining and implementing appropriate interim measures and disciplinary actions for a faculty respondent, in consultation with FASA.

Coordination between OIE and FASA is governed by the MSU Coordination Protocol, which:

[S]erves to outline the roles and responsibilities of offices in responding to known reports alleging employee violations of the [RVSM & Title IX Policy] and the Anti-Discrimination Policy (ADP) in order to (1) increase communication, transparency, and accountability; (2) ensure a seamless interconnection between the different offices and unit administrators within the university; (3) enable a process for immediate review and action (if deemed necessary) by the appropriate offices and unit administrators; and (4) comply with university policies and regulatory requirements.

According to the Coordination Protocol, OIE is responsible for notifying FASA and/or the Office of Employee Relations (“OER”) and administrative unit leadership of reported violations involving employees as respondents. However, the Coordination Protocol largely leaves the timing of this notification to the discretion of OIE, stating that “absent circumstances that require early notification,” OIE will send the notification “when a signed formal complaint is submitted.” The Coordination Protocol does not define the “circumstances that require early notification.”

A “signed formal complaint” is not an initial report OIE receives. Rather, it is a document prepared after OIE has received one or more reports and conducted an initial assessment. The claimant either signs the formal complaint or, in certain circumstances where a claimant has not been identified, the Title IX Coordinator signs the complaint.

While the RVSM & Title IX Policy sets a deadline for the completion of an investigation after the signing of a formal complaint, it does not set a deadline for the signing of a formal complaint after OIE’s initial receipt of reports of alleged misconduct. Thus, the signed formal complaint can be completed weeks, months, or even years after OIE first receives a report of the employee-respondent’s alleged misconduct. In the RVSM Respondent’s case, the formal complaint was not issued until July 28, 2022, and it appears there was a significant delay in OIE’s investigation after the April 24, 2022 initial report.

This undefined timeline means investigations are delayed, and FASA and unit leadership could be left without knowledge of reports of an alleged violation by an employee-respondent for a significant period of time. Even if OIE elected to provide an “early notification”—before the



signing of a formal complaint—there could be a significant delay between OIE receiving a report of alleged misconduct and OIE notifying FASA.

In the RVSM Respondent’s case, OIE received the first report of alleged misconduct on April 24, 2022. However, OIE did not provide “early notification” until June 16, 2022—almost two months later. This may have delayed the implementation of interim measures against the RVSM Respondent, including measures to restrict the RVSM Respondent’s interactions with students.

It is unclear why OIE waited so long to provide the early notification in this case. As no OIE employees agreed to interviews, Quinn Emanuel was not able to confirm the cause of the delay or whether caseloads have caused delays in this and other OIE investigations. However, several documents suggest that the delay may have been the product of employee turnover. Specifically, OIE’s case file for the investigation into the RVSM Respondent’s alleged misconduct reflects that an individual, referred to as “OIE Employee #3,” entered a note on May 2, 2022, showing that OIE Employee #3 had performed the following task: “[i]nitial [o]utreach [s]ent to [c]laimant.” This suggests that OIE Employee #3 may have initially been assigned to investigate the RVSM Respondent’s case. According to OIE Employee #3’s LinkedIn profile, OIE Employee #3 left MSU in May 2022. On November 14, 2022, Quinn Emanuel was informed that OIE Employee #3 is no longer employed at MSU. However, a definitive explanation for the delay has never been given.

To avoid similar delays in the future, Quinn Emanuel recommends that the Coordination Protocol be amended to require OIE to notify FASA, OER, and administrative unit leadership *within three business days* of receiving a report against an employee.

Given that Woodruff cited Gupta’s failure to notify FASA of the allegations he learned about the RVSM Respondent’s alleged misconduct as a leadership failure contributing to the ultimate decision to take the three personnel actions against Gupta, MSU should also consider whether there are any circumstances under which faculty members or unit heads should be required to report information that they learn about an employee-respondent’s alleged misconduct to FASA directly, or whether the responsibility for making this notification should remain with OIE, as the Coordination Protocol currently requires. In either case, the expectations should be clear and mandatory reporters should be held accountable for what is set forth in University policies.

## **B. Adding Standard Of Proof, Notice, And Grievance Requirements For Violations Of The Reporting Protocol**

The Reporting Protocol does not set forth a standard of proof for violations<sup>92</sup> and does not require that the respondent of a mandatory reporting failure investigation be notified of the investigation,

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<sup>92</sup> Quinn Emanuel asked OIE Employee #2: “What is OIE’s standard of proof for mandatory reporting failures (such as, for example, preponderance of the evidence)?” In OIE Employee #2’s written response, submitted through counsel, OIE Employee #2 stated: “[OIE Employee #2] used the preponderance of the evidence standard (more likely true than not true) in [OIE Employee #2’s] investigation.” It thus seems that OIE may presently be applying this standard of proof in

given an opportunity to respond to the investigation’s findings or evidence, provided a hearing, or allowed an opportunity to appeal or grieve OIE’s determination regarding responsibility.

By contrast, the RVSM & Title IX Policy sets forth a standard of proof, notice, and grievance requirements for violations of that policy.

Regarding the standard of proof, a violation of the RVSM & Title IX Policy must be proven by a “preponderance of evidence,” meaning that the respondent will be found responsible if, based upon all relevant evidence, it is “more likely true than not” that respondent committed the reported alleged misconduct. “If the evidence on a particular allegation is equally balanced, then that allegation is not ‘more likely true than not.’”

The RVSM & Title IX Policy also mandates that OIE provide the claimant(s) and respondent(s) with written notice of an investigation within three business days of the formal complaint. During the investigation, claimant(s) and respondent(s) must be given “an equal opportunity to identify potential witnesses and provide any evidence or other information relevant to the investigation.” “At the end of the investigation, the investigator must give the parties an equal opportunity to inspect and review all evidence that directly relates to the allegations in the formal complaint,” as well as an opportunity to respond in writing to the investigator within ten calendar days. Following the parties’ review of the evidence, the investigator must prepare a written investigation report.

In cases where the respondent is charged with at least one Title IX violation, both a RVSM and Title IX violation(s), or only an RVSM violation in which credibility is material to the outcome of the formal complaint, the investigator will then forward the matter to the Resolution Office for a hearing and final determination as to responsibility. The parties are given ten calendar days to send to the Resolution Office written responses to the investigation report and evidence. During the hearing, the parties have an opportunity to make arguments and present evidence.

After the hearing, the Resolution Office renders a written decision regarding responsibility. At that time, the parties must be notified of the written decision, their right to appeal, and appeal procedures.

Mandatory reporting failure cases can result in discipline that is just as severe or more severe than violations of the RVSM & Title IX Policy—as demonstrated by both (i) the personnel actions against Gupta and (ii) the fact that the Reporting Protocol expressly states that “[i]ndividuals who violate this protocol may be subject to corrective or disciplinary action, up to and including dismissal.” The lack of notice and an opportunity to meaningfully respond to mandatory reporting failure allegations or to appeal findings of a mandatory reporting failure is inconsistent with the potential implications of a finding of a mandatory reporting failure, and the lack of procedural protections may increase the risk of factual errors and errors in the resulting disciplinary actions.

Thus, Quinn Emanuel recommends that MSU adopt the “preponderance of the evidence” standard of proof for Reporting Protocol violations and so state in writing in its policies. Quinn Emanuel

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mandatory reporting failure cases. This standard of proof should be expressly stated in the Reporting Protocol to guarantee uniform application.

also recommends that MSU adopt the same notice and grievance procedures for Reporting Protocol violations as MSU has already adopted for Title IX violations.<sup>93</sup>

### C. Refining The Reporting Protocol

Title IX does not require postsecondary institutions like MSU to impose mandatory reporting requirements on their employees. At the same time, nothing in Title IX “prevents . . . postsecondary institutions[] from instituting their own policies to require professors, instructors, or all employees to report to the Title IX Coordinator every incident and report of sexual harassment.”<sup>94</sup> MSU’s Reporting Protocol imposes mandatory reporting requirements on its employees.

Under the Reporting Protocol, mandatory reporters are required to “promptly report incidents of relationship violence, sexual misconduct, and stalking” that “[t]hey observe or learn about in their working or professional capacity.” The Reporting Protocol instructs that mandatory reporters “should not investigate or attempt to determine if alleged conduct occurred,” as they are only required to report the “details known to them about the incident.”

Quinn Emanuel’s investigation revealed several points of confusion regarding certain undefined terms and the scope of the reporting obligation that merit University consideration.

*First*, the requirement of “prompt” reporting is intended to promote (i) the reporting of more accurate information (while information is still fresh in the mind of the reporter) as well as (ii) the swift investigation and remediation of any wrongdoing that has and may continue to pose a harm to members of the MSU community. However, the Reporting Protocol fails to define the word “prompt,” limiting its effectiveness. Further, the lack of a definite deadline for reporting can lead to inconsistent enforcement of the Reporting Protocol. As discussed above, in response to OIE Employee #2’s June 22, 2022 email asking Gupta to make a report, Gupta met with OIE Employee #2 and was subsequently found to have violated the Reporting Protocol. However, two other employees, Employee #2 and Employee #3, who did not file reports until September 2022, were neither investigated nor found to have violated the Reporting Protocol’s “prompt” requirement.

Accordingly, Quinn Emanuel recommends that the Reporting Protocol be revised to explicitly state the amount of time within which a report must be made after learning of reportable conduct.

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<sup>93</sup> As stated above, under the current RVSM & Title IX Policy, cases only proceed to a hearing where a respondent is charged with at least one Title IX violation, both RVSM and Title IX violation(s), or only RVSM violations but credibility is at issue or material to the outcome of the formal complaint. Because other RVSM violations can be just as severe in nature and result in just as serious punishment, Quinn Emanuel recommends that they be afforded the same notice and grievance procedures as are afforded to Title IX violations under the RVSM & Title IX Policy.

<sup>94</sup> *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30,026 at 30,107 (May 19, 2020); *see also id.* at 30,115 (stating that a postsecondary institution may require employees to report sexual harassment to the Title IX Coordinator “through policies that these final regulations do not require”).

As for the specific deadline, Quinn Emanuel recommends a 72-hour deadline, which is a reasonable timeframe that is in line with deadlines other universities' reporting policies impose.<sup>95</sup>

*Second*, the Reporting Protocol places no limits on the reporting duty based on (i) whether the information the mandatory reporter has learned has already been reported and (ii) whether such information is from a direct source (i.e., a claimant, respondent, or witness) or someone else. Quinn Emanuel discovered through its interviews and OIE records that there is widespread confusion over whether mandatory reporters are required under the Reporting Protocol to report incidents that have already been reported or incidents learned about indirectly third-, fourth- and fifth-hand.

The OIE memoranda for several mandatory reporting failure cases (other than Gupta's) illustrate that other respondents did not understand that re-reporting was required, expressing confusion about whether they were required to report "hearsay" or "rumors."

To better ensure that the Reporting Protocol is complied with as intended, MSU should evaluate the Reporting Protocol to clarify its desired scope, including whether there should be any limits on reporting parties based on their degree of separation from the underlying information or whether the information has already been reported.

In clarifying the scope, MSU should consider the unintended consequences of enforcing the current policy, which has no reporting limits. First, the policy could have a potential chilling effect on employees' willingness to share information with their supervisors to avoid triggering the supervisors' mandatory reporting duties. The email that Broad Administrator #1 sent himself memorializing his August 11, 2022 call with Gupta suggests that he intentionally withheld information about the RVSM Respondent's alleged misconduct when speaking with his superior, Gupta, to avoid triggering Gupta's mandatory reporting duties. Another consequence of having no limit on the duty could be a high volume of reports (or a high volume of mandatory reporting failure cases), particularly in highly publicized cases such as the RVSM Respondent's, which could stretch OIE's resources thin and present enforcement difficulties. As indicated above, OIE receives 1,375 reports in the academic year 2021–2022, and it is difficult to know how many of these reports are the product of employees seeking to "play it safe" by reporting information that they heard third-, fourth- or fifth-hand, and thus, in many cases, likely to have limited probative value.

In seeking to strike the appropriate balance, MSU should also consider possible consequences of overly narrowing the reporting obligation. For instance, policies limiting reporting obligations to only those with first-hand information were criticized in Ropes & Gray's December 10, 2018 report of the independent investigation regarding "The Constellation of Factors Underlying Larry Nassar's Abuse of Athletes."<sup>96</sup>

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<sup>95</sup> For instance, the University of Tennessee, Knoxville's reporting policy provides a 48-hour deadline for reporting. *See* Univ. of Tenn., Knoxville, Mandatory Reporters, *available at* <https://titleix.utk.edu/faculty-and-staff/mandatory-reporters/>.

<sup>96</sup> In particular, this report criticized the United States of America Gymnastics ("USAG") for failing to investigate reports of Nassar's misconduct merely because the reports were second-hand.

Whether it chooses to keep the current, limitless policy or narrow it, MSU should be absolutely clear in its written policies and training as to the scope of the reporting obligation. Washington University in St. Louis, for instance, instructs its mandatory reporters that “[i]t does not matter how the information is learned – shared by the victim, the perpetrator, a third party or overheard; in person, via email or some other medium,” all such information must be reported.<sup>97</sup> Likewise, the University of Tennessee, Knoxville instructs mandatory reporters to report information “whether the employee received the information by means of a complaint, report, personal observation, or otherwise, including information learned from third parties.”<sup>98</sup> In contrast, the University of Washington states that: “As a mandated reporter . . . , you must report OR cause a report to be made . . . . However, it’s almost always most helpful for the person with the most direct knowledge of the situation to make the report. This person will [be] able to provide the most accurate and specific information about the concern, child and family.”<sup>99</sup>

*Third*, the Reporting Protocol does not currently distinguish between mandatory reporters based on their positions at MSU. However, in disciplining Gupta for his mandatory reporting failure, Woodruff noted that deans are held to the highest standard of conduct. If the University wishes to hold supervisors, department heads, deans, or other administrators to a more stringent reporting standard than other mandatory reporters, it should make that explicit in the Reporting Protocol, as well as any additional steps or requirements that apply to such individuals. Before instituting such a requirement, however, MSU should consider whether imposing a higher reporting standard on senior officials could cause victims to fear that their cases will only receive attention if a dean or other senior administrator reports the RVSM violation.

*Fourth*, Quinn Emanuel recommends that the Reporting Protocol be revised to require mandatory reporters to seek guidance from OIE if they are unsure whether they are required to make a report. Although MSU has a reference to contact information on its website, it does not mandate that mandatory reporters seek guidance.<sup>100</sup> In contrast, other universities’ protocols do impose such a

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The report explained that USAG “enforced numerous policies that stifled appropriate responses to reports of misconduct” such as “the requirement that any complaint must come from a survivor or the parent of a survivor before USAG would take any action.” *See Ropes & Gray, “Report of the Independent Investigation”* (Dec. 10, 2018), *available at* <https://www.ropesgray.com/-/media/Files/USOC/ropes-gray-full-report.pdf>.

<sup>97</sup> Wash. Univ. in St. Louis, *Mandatory Reporters*, *available at* <https://titleix.wustl.edu/about-title-ix/mandatory-reporters/>.

<sup>98</sup> Univ. of Tenn., Knoxville, *Mandatory Reporters*, *available at* <https://titleix.utk.edu/faculty-and-staff/mandatory-reporters/>.

<sup>99</sup> Univ. of Wash., *Frequently Asked Questions from Mandated Reporters*, *available at* <https://depts.washington.edu/acwewa/MandatoryReporterToolkit/StudentResources/Frequently%20Asked%20Questions%20from%20Mandated%20Reporters.pdf>

<sup>100</sup> MSU’s webpage for “Information-for-Mandatory Reporters” presently provides that “[q]uestions about whether a disclosure must be reported can be referred to the Office of the General Counsel, the Office of Institutional Equity, the MSU Police Department, or the University Ombudsperson.” MSU, “Information-for-Mandatory Reporters,” *available at*

requirement: for instance, the University of Texas at Austin directs its mandatory reporters: “If you are unsure if an incident is reportable or if you don’t have all the information to make that decision, please call the Title IX Office for help.”<sup>101</sup>

*Finally*, while Title IX<sup>102</sup> does not mandate witness cooperation with Title IX investigations (and MSU’s RVSM & Title IX Policy prohibits retaliation against a witness based on that witness’s participation or lack thereof in an RVSM or Title IX investigation),<sup>103</sup> universities may encourage witness participation in Title IX or related investigations even if participation is not required. For instance, the University of California, Santa Cruz informs witnesses of Title IX investigations that “[t]he investigation process relies on the willingness of individuals to participate. However, the decision to participate as a witness in the investigation process is an individual one.”<sup>104</sup> As another example, the University of Arkansas requires employee-witnesses to cooperate with Title IX investigations,<sup>105</sup> and for student-witnesses (who are not required to participate with Title IX investigations), the University of Arkansas provides the following encouragement:

An investigation is the mechanism the University uses to determine whether its policies against discrimination and harassment have been violated and to correct and address violations that have occurred. Facts and evidence gathered by the investigator rely directly upon the information provided by the complainant, respondent, and witnesses, forming the foundation upon which the allegations are substantiated and upon which the outcome of the investigation is based. The investigation process relies on the willingness of individuals to participate.

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<https://civilrights.msu.edu/resources/information-for-mandatory-reporters.html>. However, this language is not replicated in the Reporting Protocol, and this language does not require mandatory reporters to seek instruction if they are unsure of their reporting obligations.

<sup>101</sup> Univ. of Tex. at Austin, Mandatory Reporters, *available at* <https://titleix.utexas.edu/mandatory-reporters>.

<sup>102</sup> See U.S. Dep’t of Educ., Office for Civil Rights, “Questions and Answers on the Title IX Regulations on Sexual Harassment,” *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf> (“[W]itnesses are not required to submit to cross-examination or otherwise participate in the Title IX grievance process.”) (citing 34 C.F.R. § 106.45(b)(6)(i)).

<sup>103</sup> Specifically, the RVSM & Title IX Policy states: “Neither the University nor any other person may intimidate, threaten, coerce, or discriminate against any individual . . . because the individual has made a report or complaint, provided information, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.”

<sup>104</sup> Univ. of Cal., Santa Cruz, “Participating in a Title IX Investigation Process as a Witness,” *available at* <https://titleix.ucsc.edu/resolution-options/investigations/witnesses-investigation-what-to-expect.pdf>.

<sup>105</sup> Univ. of Ark., “Participating in the Title IX Investigation Process as an Employee Witness,” *available at* <https://titleix.uark.edu/employees/witnesses.php>.

Individuals identified as having information related to the allegations who refuse to participate in the investigation, are by extension withholding information that may be critical to the outcome of an investigation, and in turn a determination about whether University policy has been violated.

The University recognizes the difficulty of participating in an investigation and the concerns that witnesses have for how their participation may influence or impact their personal life and relationships. Individuals who have such concerns are strongly encouraged to contact the Title IX Officer to discuss possible ways the University may help to prevent potential acts of retaliation, to respond to acts of retaliation that do occur, and/or work with a witness to provide mitigating solutions as appropriate and reasonable that may help a witness to participate in the investigation.<sup>106</sup>

Quinn Emanuel recommends that the University amend the Reporting Protocol to reflect the University's strong encouragement of reporters and witnesses to participate in such investigations to increase investigators' access to pertinent information. Language from the University of Arkansas's encouragement for student reporters, quoted above, may provide a helpful exemplar.

#### **D. Refining The Training Materials For The RVSM & Title IX Policy And The Reporting Protocol**

The training materials on the RVSM & Title IX Policy and the Reporting Protocol should be revised to ensure that definitions, examples, and instructions are clear and consistent. Based on Quinn Emanuel's review, the materials contain some inconsistencies that may lead to confusion. For example, one slide in the training materials for the RVSM & Title IX Policy defines "sexual harassment" as "unwelcome verbal, written, or physical behavior of a sexual nature, directed at someone on the basis of their [sex or gender]." The next slide then defines the "forms of sexual harassment" as only "quid pro quo, hostile environment, or virtual harassment," which would not seem to include one-time unwelcome verbal or physical contact, even though such contact would have fit within the prior slide's definition of sexual harassment.

In addition, the training materials should be revised to include more practical examples of conduct that is prohibited by the RVSM & Title IX Policy and the Reporting Protocols. Various MSU employees told Quinn Emanuel that the training materials make clear that criminal misconduct like rape is prohibited and must be reported, but that the training materials do not address less egregious types of conduct. To minimize confusion and better ensure compliance with the RVSM & Title IX Policy and Reporting Protocols, the training materials should explain whether behavior such as single instances of unwelcome verbal, written, or physical contact, like an unwanted hug, asking someone out on a date, or sexually suggestive dancing is prohibited and must be reported. Similarly, it should be made clear that information should be reported not only by direct witnesses and those who have heard from victims, but also admissions of misconduct by potential perpetrators.

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<sup>106</sup> Univ. of Ark., "Participating in the Title IX Investigation Process as a Student Witness," available at <https://titleix.uark.edu/students/witnesses.php>.

Further, Quinn Emanuel recommends changes to the refresher training provided to individuals found to have committed a mandatory reporting violation. In his interview, Gupta stated that the refresher training that he received as part of his discipline was the same as the normal mandatory reporting training he had already completed. On October 28, 2022, Quinn Emanuel was informed that the materials for these refresher trainings are the same materials used for normal trainings. Instead, refresher training should be tailored to the individuals receiving the training so that they can better understand their own mandatory reporting failures. As an alternative, the additional training could be verbal counseling with OIE to discuss why the mandatory reporters should have contacted OIE about the information they learned.

**E. Setting Standards And Guidelines For OIE’s Interview Reports And Memoranda Of Findings Regarding Alleged Violations Of The Reporting Protocol**

OIE’s reports memorializing investigators’ interviews of witnesses in Gupta’s mandatory reporting case (known as “records of contact”)—as well as the final OIE memorandum finding Gupta committed a violation—did not clearly delineate the information known by each witness versus the information that witness shared with Gupta and did not state the dates that witnesses learned information or shared information with Gupta. Such information is critical in determining whether a violation of the Reporting Protocols has been committed.

As a result, Quinn Emanuel recommends that guidelines be established as to the basic, minimum information that OIE investigators are required to ask interviewees, and included in interviewee reports and investigative memoranda for mandatory reporting violations. Example template forms that can be utilized by OIE investigators to ensure that such basic information is sought and recorded are included in Attachment A to this Report. Similar forms should be utilized for investigations of underlying RVSM and/or Title IX violations.<sup>107</sup>

In addition, Quinn Emanuel recommends that interviewees should be given an opportunity to review and either confirm the accuracy of their interview reports or provide written errata, before the investigator writes the memorandum with findings regarding the alleged mandatory reporting violation (or underlying RVSM violation). This is critical to ensuring that the information contained in an OIE memorandum on which adverse personnel actions may be based is accurate, non-ambiguous, and complete.

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<sup>107</sup> Quinn Emanuel recommends that OIE utilize a standardized format for RVSM and/or Title IX reports, to the extent that it is not already doing so, along the lines of the forms provided in Attachment A.



**F. Sequencing Investigations Of Alleged Violations Of The Reporting Protocol To Follow The Underlying Investigations Of Alleged Violations Of The RVSM And/Or Title IX Policy**

Quinn Emanuel recommends that future OIE investigations into mandatory reporting failures should be investigated in tandem with the associated case, with findings and conclusions sequenced with the conclusion of the associated case.

The swift and consequential mandatory reporting failure investigation into Gupta may have affected the investigation into the RVSM Respondent's alleged prohibited conduct, which had not been completed when Gupta was found to have committed a mandatory reporting failure.

In addition, OIE should make every effort to investigate alleged mandatory reporting violations in the same underlying matter at the same time to increase the likelihood of equitable treatment across violations. The lack of phasing in Gupta's case may have led to inequitable treatment of others who either did not report the RVSM Respondent's alleged misconduct or reported it months after learning about it.

Finally, the information regarding underlying allegations of RVSM or Title IX violations uncovered during mandatory reporting failure investigations should also be documented in the associated RVSM or Title IX case file. In Gupta's case, Gupta was penalized for failing to report information regarding the RVSM Respondent, sending the message that Gupta's failure to report was detrimental to the associated case, but OIE did not file, document, or use Gupta's information in the RVSM Respondent's case.

**G. Establishing Factors For Determining The Discipline, If Any, That Violators Of The Reporting Protocol Should Receive**

The lack of perfectly analogous precedent and inconsistently applied criteria led to Gupta's punishment being more severe than the punishment imposed in most other mandatory reporting failure cases, including Employee #1's mandatory reporting failure that also arose from the RVSM Respondent's case. To avoid such inconsistencies in the future, Quinn Emanuel recommends that the University consider establishing clear factors for determining the discipline, if any, for mandatory reporting failures. Such factors may include the violator's intent, motive, previous violations, history with the RVSM & Title IX and Reporting Protocol, and University position (if the University decides to impose heightened reporting requirements on leaders). For instance, first-time violators who displayed a lack of malice and/or lack of intent to violate the Reporting Protocol, have no prior history of violating the RVSM & Title IX Policy or the Reporting Protocol, and have a demonstrated history of compliance with the RVSM & Title IX Policy and Reporting Protocol should perhaps receive additional training as discipline. From there, the range of available discipline could be scaled up based on relevant factors that the University determines.

**H. Clarifying The Scope Of The Policy On Revocation Of Honors And Awards**

As discussed above, the Revocation Policy allows for the removal of honors and awards in cases of misconduct "depending on the nature and severity of the violation." This suggests that the Revocation Policy is not a "zero-tolerance" policy and, instead, that the Revocation Policy applies

only in cases involving sufficiently severe or egregious conduct. However, the Revocation Policy does not outline any criteria to use for assessing the nature and severity of the violation, which could lead to inconsistent enforcement. To avoid such a result, the Revocation Policy should be revised to delineate criteria to be used in assessing the nature and severity and/or give examples of violations that would be sufficiently severe to warrant the revocation of an honor or award.

In addition, the policy applies only where “individuals have been adjudicated and confirmed to have committed misconduct.” However, it is unclear whether an OIE investigative memorandum finding a mandatory reporting violation constitutes an “adjudicat[ion] and confirm[ation]” that the misconduct occurred, especially where the University has not followed the Discipline Policy or allowed the respondent to grieve the finding. To avoid inconsistent application of the Revocation Policy, it should be revised to clarify the desired scope of “adjudicated and confirmed to have committed misconduct.”

Finally, the Revocation Policy should be revised to expressly state who has the authority to revoke an honor or award.

### **I. Clarifying The Scope Of The Discipline Policy**

The Discipline Policy grants procedural safeguards and rights to tenured faculty members.

However, the Discipline Policy is not sufficiently clear as to its application to a member of the administration (e.g., a dean) who is also a tenured faculty member. As discussed above, although the Discipline Policy does not expressly contemplate the imposition of discipline on a tenured faculty member who is also a dean, it likely should apply to a dean who is also a tenured faculty member based on the plain language of the Policy. For the sake of clarity going forward, the University should expressly state the scope of the Discipline Policy and its application, or lack thereof, to members of the administration who are also tenured faculty members.

If the University elects to expressly exclude deans and other administrators who are tenured faculty members from the Discipline Policy, then it should adopt clear language to that effect and provide notice to such administrators that they will not be accorded the same procedural protections for violations of University policies in their administrative capacities as they would if they committed such violations solely as tenured faculty members. If, however, the University confirms that the Discipline Policy also applies to deans and other administrators who are tenured faculty members, then it should revise the Policy to include specific procedures for imposing discipline in such circumstances (such as who the “unit administrator” and “charging party” will be).

### **J. Implementing A Policy To Govern Alcohol Consumption At Off-Campus Events MSU Sponsors**

Quinn Emanuel was informed that presently, the University’s alcohol policies do not cover MSU-sponsored off-campus events. As a result, alcohol consumption at these off-campus events is unregulated. Quinn Emanuel, therefore, recommends that the University adopt a policy to govern alcohol consumption at such off-campus events, in order to help prevent future misconduct.

In determining the appropriate alcohol consumption policy, MSU should weigh the advantages and disadvantages of a policy that allows—but limits—alcohol consumption versus a policy that prohibits any alcohol consumption. As one example, the University of Iowa prohibits alcohol from being “purchased or served at events sponsored by a registered student organization or student government body, except in accordance with the Alcohol Beverage Service Guidelines” and extends the scope of that prohibition to “student organization events which take place off campus.”<sup>108</sup> In any case, limiting alcohol consumption for attendees who can lawfully drink to one or two drinks through wristbands or tickets should be considered.

**K. Implementing A Policy Requiring At Least Two Mandatory Reporter Employees To Stay For The Entire Duration Of Events MSU Sponsors**

Although some faculty members attended the initial part of the Gala on April 22, 2022, the RVSM Respondent was the only faculty member who stayed for the entirety of the event. As a result, no faculty members witnessed the RVSM Respondent’s alleged misconduct (which occurred during the latter part of the event), and no faculty members appear to have learned of the RVSM Respondent’s alleged misconduct until several days after the event, when students began to report the alleged misconduct to them.

Quinn Emanuel recommends that MSU implement a policy requiring that at least two employees who are mandatory reporters remain for the entirety of any MSU-sponsored event. This policy will help to better ensure student safety; the RVSM Respondent’s alleged misconduct may have been stopped or ended earlier if another faculty member had been present at the Gala when the RVSM Respondent acted inappropriately. It will also improve the chances of a potential RVSM violation being reported to OIE since mandatory reporters are obligated to report any misconduct they witness to OIE.

**L. Implementing A Policy To Require Communication To Other Universities/Employers About Former MSU Employees’ RVSM Or Title IX Violations**

RVSM Respondent’s alleged misconduct and subsequent departure from MSU raises the issue of whether and how MSU should report RVSM and Title IX violations of a departing faculty member to a new employer. In her interview, Woodruff stated that University #2 had not been notified when the RVSM Respondent was found to have violated the RVSM & Title IX Policy, and that MSU does not currently have a policy requiring notice to other institutions about findings of RVSM or Title IX violations against MSU’s former employees. The absence of such a policy jeopardizes the safety of those outside MSU. Presently, the only mechanism for other universities/employers to obtain such information from MSU is for them to file a FOIA request. To promote the safety of those outside MSU, Quinn Emanuel recommends that MSU adopt a policy to require communication to other universities or employers about the final findings of RVSM & Title IX Policy violations by former MSU employees.

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<sup>108</sup> Univ. of Iowa, “Policy Regarding the Use of Illegal Drugs and Alcohol,” *available at* <https://dos.uiowa.edu/policies/illegal-drugs-and-alcohol/>.

Consideration of such a policy requiring communication of findings of a violation of the RVSM & Title IX Policy to follow-on employers underscores the importance making the other improvements this Report recommends. In other words, if the University chooses to communicate violations to outside institutions, it will be even more important for those findings to be accurate and based on best practices.

### M. Expanding The Resources For OCR

According to a presentation that OIE Employee #1 made to the Board on September 8, 2022, for the academic year 2021–2022, OIE received 1,375 reports, with 973 of those reports alleging some kind of RVSM violation, and investigators generally were assigned to seven to fifteen cases at a time. That presentation states: “Ideally Investigators would have 7 or less.”

**Office of Institutional Equity**

- OIE receives high volume of reports –  
\*table does not include duplicate, consultation, ADA grievance, etc.
- All reports require careful review and follow up
- Investigators generally have 7-15 cases assigned
  - Ideally Investigators would have 7 or less

AY 2021-2022	ADP	RVSM	Blend	Total
Reports	402	792	181	1,375
Formal Investigations	25	34	0	59
Violations	2	6	0	8
No Violation	15	7	0	22
Findings Pending	8	21	0	29

As of the date of this Report, there are nine investigators in OIE.

Another presentation that a faculty member presented to the Board on September 8, 2022, reflects that OIE’s volume of reports and investigators is much higher than its peer institutions, as shown by the following slide from the presentation.

	<u>Campus Size</u> (students, faculty, staff <sup>2</sup> )	<u>Volume of Reports</u>	<u>Investigations</u>
University of Illinois Urbana-Champaign	68,795	341 <sup>2</sup>	21 <sup>3</sup>
Indiana University-Bloomington	55,954	213	44 <sup>2</sup>
University of Iowa	49,004	521 <sup>2</sup>	44
University of Maryland-College Park	51,230	249	16
University of Michigan-Ann Arbor	74,897	469	36
University of Minnesota-Twin Cities	72,198	532	54
University of Nebraska-Lincoln	30,327	unknown	unknown
Northwestern University	28,403	580	56
Ohio State University	97,333	unknown	unknown
Penn State University-University Park	67,767	745	34
Purdue University-West Lafayette	61,134	unknown	35 <sup>2</sup>
Rutgers University-New Brunswick	70,148	257	58
University of Wisconsin-Madison	66,777	234	9
<b>Michigan State University</b>	<b>62,325</b>	<b>1774</b>	<b>143</b>

Quinn Emanuel recommends that the University consider investing more resources into staffing at OIE, for several reasons.

*First*, investigations into alleged violations of the RVSM & Title IX Policy and the Reporting Protocol are currently assigned to only one investigator, including for witness interviews. As a best practice, Quinn Emanuel recommends that two investigators be present for every witness interview.<sup>109</sup> This practice will better ensure that information reported to OIE by victims, witnesses, respondents, and other reporters is accurately reflected in OIE’s reports.

Increasing OIE’s staffing also will help ensure that OIE is able to meet any deadline that the University decides to set for OIE’s notification to FASA and unit heads.

*Second*, if the University adopts Quinn Emanuel’s recommendation of revising the Reporting Protocol to direct mandatory reporters to seek guidance if they are unsure of their reporting duties, this could foreseeably lead to a greater volume of inquiries to OIE. Increasing OIE’s staffing will help OIE have greater capacity to field and respond to these inquiries.

*Finally*, increased staffing may also be necessary to mitigate expanded workloads that may result if MSU adopts Quinn Emanuel’s recommendations to afford the same notice and grievance procedures to mandatory reporting failures and RVSM violations that are already afforded to Title IX violations.

Related to the goal of increasing OIE’s resources is the goal of ensuring that those resources are focused on OIE investigations. In investigating Gupta’s alleged mandatory reporting failure, it appears that OIE also investigated human resource-related issues. For instance, the record of contact for OIE’s June 22, 2022 interview of Gupta indicates that OIE asked Gupta questions about what he knew about the RVSM Respondent’s retirement—an issue that appears to fall under FASA’s purview. To ensure that, going forward, OIE’s resources are focused on investigating alleged violations of policies within OIE’s purview, the University should consider whether to implement a formal policy restricting OIE’s investigative scope to matters under OIE’s authority.

## **N. Improving The Title IX Certification Process**

The Trustees’ obligation to certify that they have “reviewed all title IX reports involving the alleged sexual misconduct of an employee of the university” is codified in Mich. Comp. L. § 388.1865b(2). Through its conversations with the Board—as well as through its review of the report of Honigman, LLP, dated November 2, 2022<sup>110</sup>—Quinn Emanuel learned that, historically, the Trustees have been given little guidance on how to review reports, and Trustees have lacked

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<sup>109</sup> Some other universities like the University of Texas assign two investigators to each Title IX case. See Univ. of Tex., “Title IX: Formal Investigation Process,” available at <https://titleix.utexas.edu/sites/default/files/Formal%20Investigation%20Process%202018-2019.pdf>.

<sup>110</sup> See MSU Trustees, “Honigman Report of Investigation” (Nov. 2, 2022), available at <https://trustees.msu.edu/meetings/documents/2022/BOT%20Statement%20and%20Honigman%20Report%2011.4.22.pdf>.

internal procedures to follow up on questions arising from their review of reports. To promote an efficient and informed review of the Title IX reports, Quinn Emanuel recommends that the following actions be taken.

*First*, a deadline for the submission of reports for the Trustees' review should be set. This deadline should consider the date by which certification must be made, the historical volumes of reports, the average time taken to read a report, and additional time needed to allow the Trustees to conduct any necessary follow-up.

*Second*, a formal process should be implemented for the Trustees to ask questions, if they have any, of the OIE investigators who authored the reports. Where, the report makes a referral to another department, there should be a formal process for determining whether that follow-up has been done, and what the outcomes were. A number of the reports merely make a referral with no indication of what follow-on actions, if any, were taken.

*Third*, as with the recommendation of the OIE reports discussed above, OIE should follow a standardized format for its report so all relevant information is captured.

*Fourth*, the Trustees should receive training at least once a year on Title IX investigation and report requirements, how to review a report, and items meriting follow up from a Trustee.

In reviewing an investigative report, Trustees should be guided by the following checklist:

Do the initial allegations constitute one of the categories of offenses subject to Title IX: quid pro quo harassment; unwelcome conduct that is severe and pervasive; and/or sexual assault (including non-consensual sexual contact), dating violence, domestic violence, or stalking?

Yes     No

Are the basic procedural requirements met?

- Does the overall process seem objective?  
 Yes    No
- Does the process appear thorough and to have considered all relevant evidence?  
 Yes    No
- Was the investigative report completed within 60–90 days of the complaint?  
 Yes    No
- Did the parties receive the required notices?  
 Yes    No

Was any relevant evidence obtained and reviewed?

Yes    No

Did the parties have an opportunity to submit written responses to the investigative report?

Yes  No

Does the investigative report reflect that the parties were interviewed?

Yes  No

Does the investigative report reflect that witnesses, if any, were interviewed?

Yes  No

Was there a live hearing?

Yes  No

Did the parties receive notice and an opportunity to participate in the hearing?

Yes  No

If a party did not have an advisor, was he or she appointed one to conduct cross-examination on his or her behalf at the live hearing?

Yes  No

From the summarized evidence, for a finding of respondent responsibility, is it more likely than not that the respondent committed the alleged violation?

Yes  No

Did the parties have ten days to review and respond to the report?

Yes  No

Were the parties given ten days to appeal the findings?

Yes  No

Was a referral made to another entity/office? If so, was the necessary follow-up done and are appropriate follow-on steps being taken?

Yes  No

Do you have any reason to question the procedural process or its result, based on your review of the report?

Yes  No

If you checked "no" to any of the above questions, or if you identified other questions or concerns with the Title IX report, please describe the follow-up actions that you took to address and resolve these issues:

## **VIII. Conclusion**

As indicated above, while Quinn Emanuel did not have the benefit of a full evidentiary record, Quinn Emanuel was able to reach the above conclusions and recommendations based on the interviews it conducted as well as its review of an extensive documentary record, including communications and memoranda from individuals who declined to interview. Taken together, Quinn Emanuel's conclusions suggest that while MSU has made progress in its approach to Title IX and RVSM investigations, there is still much work to be done, including clarifying and refining University policies; improving and better funding the entities entrusted with carrying out such investigations; standardizing its methodology and recordkeeping and applying best practices in its investigations; and ensuring greater consistency and fairness in its personnel actions where violations are found. While the Gupta investigation has received enormous public attention, including as a case study in this Report, the issues the University should address extend beyond the Gupta matter itself, and Quinn Emanuel hopes that this Report will provide a useful lens through which the University community can continue to make progress in addressing the important issues surrounding Title IX.



ATTACHMENT A

**TEMPLATE FORMS FOR MANDATORY REPORTING  
FAILURE INVESTIGATIONS**

**Form for Interviews of Mandatory Reporting Failure Respondents:**

In completing the following form, ask and record as much detail as possible regarding the following questions. If the interviewee cannot recall certain information, that should be documented in the spaces below as well.

(1) Did the respondent personally observe the misconduct?

Yes  No

*If yes, proceed to (2). If no, skip to (11).*

(2) What conduct did the respondent observe?

(3) Who committed the conduct?

(4) To whom was the conduct directed?

(5) When did the conduct occur?

(6) Where did the conduct occur?

(7) How many times did the conduct occur?

(8) Who else, if anyone, witnessed the conduct?

(9) Who else, if anyone, did the respondent tell about the conduct?

(10) Who else, if anyone, knows about the conduct?

(11) Who reported information to the respondent?

(12) What information did the person(s) report to the respondent? If more than one person reported to the respondent, clearly state the information reported by each individual separately.

(13) How did the person(s) report the conduct to the respondent? I.e., in-person, by phone, by email, by text, by social media, etc. If more than one person reported to the respondent, clearly state how each individual reported.

(14) How and when did the person(s) reporting to the respondent learn about the conduct? If more than one person reported to the respondent, clearly state how/when each individual learned of the conduct separately.

(15) When did the person(s) report to the respondent? If more than one person reported to the respondent, clearly state the date/time that each individual reported to the respondent, making clear the sequence of when each individual reported to the respondent.

(16) Did the person(s) state that he, she, they, or others had filed an OIE report? If so, provide as much detail as possible as to the information that they said they included in the report, and when they filed the report.

(17) Did the person(s) report information about the conduct to anyone else? If yes, state who they reported to, what they reported, when they reported, and how they reported.

(18) Why did the respondent not file a report?

(19) Did the respondent seek instruction on whether they were required to file a report? If yes, state from whom they sought instruction, when they sought instruction, how they sought instruction, and what instruction they were given.

(20) Is there any other information that OIE should know about the incident? Document anything that the respondent states in response.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Form for all Other Interviewees:**

In completing the following form, ask and record as much detail as possible regarding the following questions. If the interviewee cannot recall certain information, that should be documented in the spaces below as well.

(1) Did the interviewee personally observe the misconduct?

Yes  No

*If yes, proceed to (2). If no, skip to (10).*

(2) What conduct did the interviewee observe?

(3) Who committed the conduct?

(4) To whom was the conduct directed?

(5) When did the conduct occur?

(6) Where did the conduct occur?

(7) How many times did the conduct occur?

(8) Who else, if anyone, witnessed the conduct?

(9) Who else, if anyone, knows about the conduct?

(10) Did the Interviewee report information about the conduct to the respondent?

Yes  No

*If yes, proceed to (11). If no, skip to (19).*

(11) What information did the interviewee report to the respondent?

(12) How did the interviewee report the conduct to the respondent? I.e., in-person, by phone, by email, by text, by social media, etc.

(13) When did the interviewee report to the respondent?

(14) Did the interviewee tell the respondent that he, she, they, or others had filed an OIE report? If so, provide as much detail as possible as to the information that Interviewee said was included in the report(s), and when the report(s) was/were filed.

(15) What information does the interviewee believe the respondent knew about the conduct?

(16) From whom did the interviewee learn this information?

(17) When did the interviewee learn this information?

(18) How did the interviewee learn that the respondent knows this information? I.e., in-person, by phone, by email, by text, by social media, etc.

(19) Did the interviewee report information about the conduct to anyone other than the respondent? If yes, state who they reported to, what they reported, when they reported, and how they reported.

(20) Is there any other information that OIE should know about the incident? Document anything that the interviewee states in response.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT B**  
**Statement by Thomas Jeitschko Regarding Interview Participation**

Before agreeing to answer your questions and engage in further conversations, I want to state my concern and objection to the manner of investigation with respect to the circumstances of Dr. Gupta's resignation. Whether and when to relieve a Dean of their duties are academic management decisions that are tied to at-will assignment of academic management responsibilities subject to the Provost's discretion based on the Provost's trust and confidence of their immediate reports. The need for an at-will relationship is necessarily required, in light of the degree of discretion that is afforded deans in the administration of their colleges. Given that the Provost Office and the provost were prepared to further engage on this matter and that this avenue of inquiry had not been exhausted, I believe that the a decision to engage outside parties for a review was premature, unwarranted and, thus, encroaches impermissibly into areas that are otherwise within the exclusive province of the Office of the Provost. The decision to ask for Dr. Gupta's resignation, specifically, was exclusively a matter of University academic management to be made by the Office of the Provost, notwithstanding the Board's overall oversight of university administration. While affirming the recognition of the Board's overall oversight responsibilities, the incursion into the realm of academic administration in this manner has potentially serious consequences, including from an accreditation standpoint. My participation is not, and should not be construed as, an endorsement of the manner of and propriety of the Board's inquiry. Moreover, my participation is not intended to create a precedent or expectation for my or the Office of the Provost's participation in any future Board inquiries into matters of academic management, nor should it guide the possible participation of any other members of the provost office or other university employees at this time.

With that said, I chose to participate in this conversation because of the specific circumstances unique to the aftermath of Dr. Gupta's resignation and the Board's subsequent inquiry. Specifically, I have an interest in ensuring that the Board's inquiry accurately reflects the actions of the Office of the Provost and the basis for those actions. I also desire to protect the institution of MSU by bringing this matter expeditiously to a close, as it has harmed and continues to harm the University, and I believe that this is a sentiment shared by the Board of Trustees. Moreover, I do not want a lack of participation by myself or others associated with the Office of the Provost to be construed as obstructionist or done with an intent to hide any of the relevant facts. To the contrary, our interest at all times has been to ensure (A) a fulsome understanding of the relevant facts, by the responsible University entities, following the established University policies; and (B) that the interests and safety of the University's faculty, staff, and students were protected by taking the appropriate action under the circumstances. Indeed, while a direct engagement with the Board is the appropriate avenue for engagement, it is my sincere belief that at this point my engagement with you is in the mutual interest of the Board and the provost office and University administration at large; and is also sufficient to bring this inquiry to a conclusion without the need for further engagement by others.