

MICHIGAN STATE UNIVERSITY

Statement by the MSU Board of Trustees
September 30, 2022

Today, President Stanley certified to the State of Michigan that the University satisfied the requirement under Michigan law that the President and a member of the Board of Trustees review all Title IX reports involving the alleged sexual misconduct of University employees for fiscal year 2022. Recently, the Board became aware of concerns regarding the reliability of the University's prior 2021 Title IX certification. In response to these concerns and to address concerns raised by the Board about the certification process generally, the University's Office of Audit, Risk, and Compliance conducted a review of the Title IX certification process. In the interests of transparency, the Board is releasing the independent audit of Marilyn K. Tarrant, MSU Chief Audit, Risk and Compliance Officer, dated September 13, 2022. The names of individuals have been redacted to protect their privacy.



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In addition, the Board took swift action by retaining two outside law firms to investigate the 2021 Title IX certification process, provide guidance to the Board in reviewing Title IX reports, identify shortfalls in the process, and make recommendations to improve the process. The reviews by these law firms, Honigman LLP and Quinn Emanuel Urquhart & Sullivan LLP, remain ongoing.

Nonetheless, in addition to the 2022 certification – out of an abundance of caution – members of the Board have reviewed the relevant Title IX reports for fiscal year 2021 and President Stanley has re-certified that the University satisfied the requirement under Michigan law for fiscal year 2021. President Stanley has submitted that re-certification to the Legislature and State of Michigan.

MICHIGAN STATE UNIVERSITY

September 13, 2022

ATTORNEY CLIENT PRIVILEGE – CONFIDENTIAL MEMORANDUM

TO: Board of Trustees Committee on Audit, Risk and Compliance (ARC)

FROM: Marilyn K. Tarrant, Chief Audit, Risk and Compliance Officer ^{MKT}

SUBJECT: OCR Trustee Review Process

SYNOPSIS

We received an inquiry from certain Trustees regarding concerns relating to the Trustee review process used to certify reviews of final investigative reports/determinations. Specifically, whether MSU has been and will be compliant with the state of Michigan appropriations bill boilerplate stipulations for Trustee certification requirements. We conducted procedures to address the Trustee's concerns, which are detailed below. Our review of the concerns resulted in the identification of process weaknesses related to the current workflow. Below are proposed recommendations to address these weaknesses.

BACKGROUND

The Office for Civil Rights (OCR) Resolution Agreement was effective August 27, 2019, and its term is scheduled for three academic years beginning with the 2019-2020 academic year. Requirements are defined below:

U.S. Department of Education, 2019 Resolution Agreement, OCR Docket #15-18-6901, §II(B) Note to the President and Board of Trustees: The President and Chair or a Chair designated member (or members) of the Board of Trustees who is (are) a member (members) of a Board committee or subcommittee with responsibility for reviewing such reports shall receive a report identifying all open and recently resolved Title IX complaints filed against an employee in their capacity as an employee, and shall receive a copy of all corresponding final investigative reports and written determinations issued during the semester. Such report shall be received not more than 30 days after the close of each semester.

In addition, the state of Michigan appropriations bill boilerplate language includes requirements stated below:

Michigan State School Aid Act, 1979 PA 94, MCL 388.1601, et seq (Education Omnibus) To increase campus transparency, annual appropriations bills have included boilerplate language requiring schools to submit a certification that its



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president and a member of its governing board have reviewed all “title IX reports involving the alleged sexual misconduct of an employee of the university.”

The President and at least one member of the Board of Trustees will also receive a quarterly report containing aggregated data (without identifying information) of the number of relationship violence and sexual misconduct reports, including but not limited to reports against employees, received for the Academic year and a summary of general outcomes.

Note: If the University does not comply with the requirements set forth in the Act, the State can withhold 10% of the University’s annual operations funding.

Both of the above require Trustee review of reports, thus if the OCR Resolution Agreement ended, it would not change the required review and certification process.

INVESTIGATIVE PROCEDURES

The following procedures were performed during our investigation:

- Reviewed the OCR Resolution Agreement requirements for reports to be distributed and cases requiring trustee review – U.S. Department of Education, 2019 Resolution Agreement, OCR Docket #15-18-6901, §II(B)
- Reviewed the state of Michigan appropriations bill boilerplate language for reports to be distributed and cases requiring trustee review and certification – Michigan State School Aid Act, 1979 PA 94, MCL 388.1601, et seq (Education Omnibus)
- Reviewed distribution emails for acknowledgment of opportunity for Trustee feedback
- Requested the policy that guides the process workflow
- Reviewed distribution of information necessary to comply with the OCR Resolution Agreement
- Reviewed distribution of information necessary to comply with the state of Michigan higher education appropriations provisions
- Requested and reviewed copies of certification forms
- Reviewed the follow-up process to ensure certification forms were collected each semester
- Reviewed training provided to the Trustees regarding the review process

INVESTIGATIVE FINDINGS

1. A comprehensive process workflow policy to ensure consistency over time was not in place.
2. Over time messaging was inconsistent, incomplete, and unclear. Since the distribution process started there were repeated changes in the individuals that distribute the emails for the OCR Trustee review process.
 - a. Fall 2019 – [REDACTED] email to President and [REDACTED]; [REDACTED] to full Board at the time
 - b. Spring 2020 – [REDACTED] email to President and [REDACTED]; [REDACTED] to full Board at the time
 - c. Summer 2020 – [REDACTED] email to President and [REDACTED]; [REDACTED] to full Board at the time

- d. Fall 2020 – [REDACTED] email to President and [REDACTED]; [REDACTED] to ARC Committee members
 - e. Spring 2021 – [REDACTED] email to President and [REDACTED] and additional email related to the state of Michigan; [REDACTED] to full Board and [REDACTED] to ARC Committee members
 - f. Summer 2021 – [REDACTED] email to President and [REDACTED]; [REDACTED] distribution to ARC Committee members and one additional Trustee
 - g. Fall 2021 – [REDACTED] to ARC Committee members and separate email to [REDACTED] to share with the President
 - h. Spring 2022 – [REDACTED] to President, [REDACTED], ARC Committee members and numerous administrative staff. In addition, a member of OGC sent cases to the ARC Committee members
3. In some cases, files attached to emails had numerous documents (e.g., investigative report; RSO decision; RO decision) related to a particular case number. Instructions were absent regarding whether all files needed to be reviewed and how to document multiple case documents on the certification form.
 4. There is inaccurate information in the certification form provided to the Trustees – appears to state that the Certificate of Review they sign may be provided to the state of Michigan.
 5. The designated return location was not identified in some emails (i.e., The completed forms can be returned via email).
 6. Even though OCR kept a tracker spreadsheet, no follow-up was seen until June 15, 2022, in a sentence buried near the end of a routine email.
 7. Certification forms were sent with no case numbers detailed on the form; in one distribution, case numbers were added to the form but the Trustee name was not populated. Also, the semester was not always included on the form.
 8. Training was provided at the February 11, 2021 work group session to provide information regarding the new state of Michigan appropriations bill boilerplate requirements to certify (not required with the OCR Resolution Agreement). The notes to this PowerPoint presentation included an explanation for the meaning of the verb “review” in the event a question was asked. [See Attachment A](#)
 9. Cases divided amongst individual members of the ARC Committee may be voluminous.
 10. Case feedback channels were not routinely provided.
 11. For the 2021 state of Michigan certification, [REDACTED] relied on a verbal confirmation from a Trustee. This was not the standard certification process thus [REDACTED] circumvented the established process. No written verification was received to confirm the verbal attestation. This Trustee informed us that they are not part of the process workflow and do not receive the case files. [REDACTED] could have inaccurately used the Cozen (third-party used for OCR Resolution Agreement section 1.D.) review reports, which this Trustee does review, in falsely making this claim. The Cozen semesterly report was sent to the Chair, Board of Trustees, University President, Associate VP OCR and VP for Legal Affairs. Also, another Trustee, that is not part of the ARC Committee, provided a certification for a period of time but clarification is pending regarding what was reviewed.
 12. For the 2022 state of Michigan certification, collection of the completed certification forms to date reveal that some cases (13) may not have been reviewed and/or the certification form may not have been completed. It should be noted that Summer 2022 cases have not

been distributed. Also, another Trustee, that is not on the ARC Committee, requested to review cases, determination is pending as to what was reviewed.

FINDINGS & RECOMMENDATIONS

The OCR review process was ineffective in obtaining adequate assurance of case review and/or certification by the ARC Committee members. Weaknesses in the process were identified. The following recommendations will result in an improved process to ensure compliance with the requirements:

Recommendations

1. The OCR review process should be documented in a policy.
2. The OCR review process should be simplified to allow the “individual” Trustees to receive semesterly emails with their assigned cases and a certification form that is pre-populated with their name, the semester, and the associated cases. A portal may provide a solution.
3. If individual cases include other closed documents (e.g., RO, RSO decisions), acknowledge in entirety what the Trustee should be reviewing and documenting on the certification form.
4. Review the certification form to ensure consistency and accuracy.
5. The return of the certification form should include a consistent dedicated email mailbox. If a portal is utilized (#2 above), an on-line electronic certification form could be implemented.
6. The oversight process should be strengthened to ensure certification forms are returned timely and provide gentle reminders when indicated.
7. To streamline the certification process, insert detailed information on the certification form (#2 above).
8. Annual refresher training should be provided to the Trustees regarding the process. The definition of review versus read should be clarified for Trustees to understand their responsibilities.
9. Consideration should be given to include all or more Trustees in the process to reduce the burden on the ARC Committee members. Trustees serve on related committees, e.g., Committee on Academic Affairs, Committee on Student Life and Culture (resolution agreement stipulation - member of a Board committee or subcommittee with responsibility for reviewing such reports) while the state of Michigan boilerplate language is not specific in that it requires only one member of the Board.
10. The OCR case review process should allow the opportunity for Trustees to present questions regarding the reports/decisions and offer suggestions regarding policy and process changes. This process would enable Trustees shared thoughts and potentially identify patterns/trends. However, confidentiality of the information in the reports/decisions must be maintained.
11. The prior academic year should be reviewed to provide assurance that the cases distributed were certified on the certification form.

12. To comply with the October 1, 2022 deadline, the Summer 2022 semester closed cases should be distributed and a process should be implemented to obtain certifications for the cases distributed for the academic year but where certification forms are still outstanding. See Attachment B

We are happy to assist in improvements to the process workflow and in finalizing the review/certification effort to successfully comply with the October 1 deadline.

c: Trustee Byrum
Brian Quinn

Attachment A
Attachment B