

MICHIGAN STATE UNIVERSITY

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Nov. 4, 2022

The Michigan State University Board of Trustees today announced that the law firm of Honigman LLP has completed its review of Michigan State University's 2021 Title IX certification process.

The Board retained Honigman on August 22, 2022, to investigate whether the university satisfied a state law requirement to certify to the state of Michigan that the MSU President and a member of the Board of Trustees reviewed all academic year 2021 Title IX reports involving the alleged sexual misconduct of employees of the University. Honigman was also asked to determine how and why any process failures occurred, and to recommend specific actions to improve the university's Title IX certification process.

Honigman reviewed over 24,000 documents and interviewed 18 witnesses, including all eight Trustees, President Stanley, and current and former university employees. The investigation was led by Honigman partner Matthew Schneider, the former United States Attorney in Detroit. Schneider is the Leader of Honigman's Investigations and White Collar Defense practice.



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Honigman concludes:

First, the University failed to meet its obligations under state law requiring the President to certify that he and at least one Board member reviewed each Title IX report involving an employee. As such, the President's 2021 certification to the state of Michigan was inaccurate.

Second, the President relied upon incorrect information provided by the MSU Title IX Office. This information formed the basis for his certification to the state of Michigan.

Third, although the 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. The President's 2022 certification to the State of Michigan, which

certified the University's 2022 review and re-certified the university's 2021 review, was accurate.

Fourth, although the university lacks a unified procedure for tracking Title IX reports, ensuring they are reviewed, and certifying to the state, the university now has an opportunity for process improvement. In fact, the Board and the university have already taken steps to improve the process.

MSU Board of Trustees Vice Chair and Chair of the Audit, Risk and Compliance Committee of the Board, Dan Kelly, announced the results of the Honigman report. Kelly stated:

"I appreciate the hard work of the Honigman Law Firm and their lead attorney, Matthew Schneider. I am happy to report that with their help, the Board of Trustees has brought the University into compliance with State law and the law's intent to protect the safety of our students and employees. I am proud of the Board for unanimously agreeing to release this report. However, I remain troubled by the inaccurate certification submitted by the President in 2021, which clearly demonstrates the internal administrative failures and lack of procedures which were allowed to exist for too long. The investigation's findings confirm that little, if anything, was done by the President to address the certification concerns raised by the Board for over two years. The Board remains committed to improving our Title IX processes to avoid a repeat in the future and will take seriously the recommendations contained in the report. We look forward to the Interim President's commitment to improve communication and our mutual goal of exemplary Title IX enforcement."

Honigman determined that significant breakdowns in the University's Title IX reporting process prevented the University from properly certifying to the State. Honigman made over a dozen recommendations for improving the MSU reporting process. The recommendations include restructuring how the

University reviews and distributes Title IX reports, creating consistency in the review process, establishing a regular auditing process, and offering increased training.

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Report of Investigation:

**Michigan State University's 2021
Title IX Certification to the State of Michigan**

November 2, 2022

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I. BACKGROUND

A. Statutory Requirements

Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. §1681 *et seq.* prohibits discrimination on the basis of sex in educational programs and activities. Schools that receive federal funding must comply with Title IX. Most relevant here, Title IX requires that a higher education institution, such as Michigan State University, must regularly document and report allegations of sexual misconduct of University employees. *See* 20 U.S.C. §1681 *et seq.* These reports, which are reduced to writing, are commonly known as “Title IX reports.”

In addition to and in furtherance of the federal requirements set forth under Title IX, in 2018 the State of Michigan enacted a law housed in the Michigan State School Aid Act of 1979 (the “Act”), Mich. Comp. Laws §388.1601 *et seq.*, which sets forth various requirements related to Title IX and penalizes universities that fail to comply with Title IX reporting. In particular, Section 265b of MCL §388.1865b mandates that, to avoid a 10% reduction in operations funding, Michigan State University must “certify that its president or chancellor and a member of its governing board has reviewed all title IX reports involving the alleged sexual misconduct of an employee of the university.” Mich. Comp. Laws §388.1865b(2). The Act requires universities to send their certifications to the State Budget Director, the House and Senate Fiscal Agencies, and the House and Senate Appropriations Subcommittees on Higher Education by October 1 of each year. *Id.* If a university fails to submit a certification, the State Budget Director “shall withhold 10% of that university’s annual operations funding until the university submits certification.” *Id.*

B. The University’s Process – As Intended

After the Michigan law was enacted in 2018, Michigan State University began taking steps to comply with the Act’s reporting and certification requirements. In particular, the University created a dual-track process for the President and certain members of the Board of Trustees to review the Title IX reports. The University did not formally establish any one particular process, and the process evolved over time.

This internal process was substantially as follows. The University’s Title IX Office (the “Title IX Office”) compiled the relevant Title IX reports at the conclusion of every academic term (Fall, Spring, and Summer) and redacted personally identifiable information to protect the anonymity of complainants pursuant to MCL §388.1865b(1)(h). The Title IX Coordinator sent the Title IX reports to the President. The President then reviewed the Title IX reports.

At the same time, the Title IX Coordinator also sent the Title IX reports to the members of the Board of Trustees Committee on Audit, Risk and Compliance (the “ARC Committee”). The Committee in 2021 consisted of Trustees Dan Kelly, Renee Knake Jefferson, Pat O’Keefe, and Brianna Scott (the “ARC Trustees”). The Title IX Coordinator assigned the review of the Title IX reports to individual Trustees based upon volume.

The University requested that the President and each ARC Trustee certify that he or she had reviewed the assigned Title IX reports by completing an internal certification form (an “Internal Review form”). The Internal Review forms were maintained to track the review process and to memorialize that the President and a Trustee had indeed reviewed the assigned Title IX

reports as required under Section 265b. The forms did not indicate that the President or a Trustee agreed with the substance, conclusion, or outcome of the Title IX reports.

After the President and ARC Trustees transmitted their Internal Review forms to the Title IX Office, the Title IX Office entered the relevant information in a spreadsheet, which tracked (1) the Title IX reports by case number; (2) the pertinent semester of review; (3) the assigned Trustee; and (4) whether a Trustee submitted the Internal Review form. The spreadsheet was used for internal purposes to track whether the President and ARC Trustees fulfilled their obligations to review the Title IX reports.

Once the Title IX Office received all of the Internal Review forms, the Title IX Coordinator communicated to the University's General Counsel and Office of Financial Planning and Budget that the President and at least one Trustee, or a combination of Trustees, had met their obligations to review the Title IX reports.

The Office of Financial Planning and Budget would then communicate to the President that the review requirements were satisfied, and would send the President a form for the President's signature attesting that to the best of the President's knowledge, both the President and a member of the Board had reviewed all of the Title IX reports for that academic year. The Office of Financial Planning and Budget would then transmit that form to the State Budget Director and to the Legislature.

C. Investigation and Summary of Findings

In June 2022, Trustees raised specific concerns regarding the University's Title IX certification process. Specifically, on June 22 and 23, 2022, at a meeting of the Trustees, the President, and senior University staff, two of the ARC Trustees explained they had not reviewed all of their Title IX reports in 2021.

On July 19, 2022, in response to concerns about the certification process that a member of the ARC Committee had raised to MSU General Counsel Brian Quinn, the University's Office of Audit, Risk, and Compliance began conducting an audit of the Title IX certification process (the "Audit").

On August 12, 2022, Marilyn K. Tarrant, the University's Chief Audit, Risk, and Compliance Officer, preliminarily determined that the University's Title IX certification process contained numerous deficiencies.

On August 22, 2022, the Board retained Honigman LLP to conduct an investigation into whether the University properly certified pursuant to Section 265b of MCL §388.1865b, among other things. Specifically, Honigman was directed to (1) investigate whether the University fulfilled its 2021 state law reviewing and certifying obligations; (2) determine, if the University had failed to fulfill its obligations, how and why the failure occurred; and (3) recommend specific actions to the University to improve the process.

Over the past several weeks, Honigman has conducted an extensive investigation of the 2021 certification process. We interviewed 18 witnesses, including every Trustee, President

Stanley, and current and former University employees. We also reviewed thousands of documents, including custodial emails. In short, Honigman concludes the following:

- First, the University failed to meet its obligations under Section 265b requiring that the President and at least one Board member review each Title IX report involving an employee prior to certifying to that effect. As such, the President's 2021 certification to the State of Michigan was inaccurate.
- Second, the President relied upon incorrect information provided by the Title IX Office. This information formed the basis for his certification to the State of Michigan.
- Third, although the 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. The President's 2022 certification to the State of Michigan, which certified the University's 2022 review and re-certified the University's 2021 review, was accurate.
- Fourth, although the University lacks a unified procedure for tracking Title IX reports, ensuring they are reviewed, and certifying to the State, the University now has an opportunity for process improvement. In fact, the University has already taken steps to improve the process by utilizing an electronic portal to receive and review reports.

II. INVESTIGATIVE METHODOLOGY

To satisfy the client's needs and underlying purpose of this engagement, Honigman engaged in an extensive investigation into these issues, which included document and data collection and witness interviews. The investigative methodology is described in greater detail below.

A. Document Review and Data Collection

The University produced approximately 24,293 documents to us in a rolling production. The documents primarily consisted of email correspondence involving the Trustees, the President, and MSU employees.

B. Witnesses

We interviewed 18 witnesses, including all eight Trustees, President Stanley, senior University staff, and additional University employees and former employees. While most interviews took place in person, some interviews were conducted via videoconference, or began in person and continued via videoconference at a later date. Some witnesses were interviewed

more than once. All witnesses voluntarily agreed to be interviewed, with the exception of former employee Denise Jones,¹ who did not respond to our repeated interview requests.

C. Investigative Gaps

This Report describes actions and events supported by the evidence collected during our investigation. The Report does not detail every piece of information we collected. Rather, it contains the information necessary to explain the events at issue, our findings, and our recommendations to the Board.

Our investigation did not always yield a complete record of events. For example, some University employees lacked the memory to explain the past Title IX reporting procedures or did not document their past communications. Some employees contradicted the observations of other employees. One former University employee, Denise Jones, declined our requests for an interview. Thus, while our Report embodies factual findings we believe to be accurate and complete, it is possible that information unavailable to us would shed additional light on some of the events described herein.

It is important to note that some Trustees and University employees used non-MSU email accounts to discuss University business, including the Title IX review process. The use of non-MSU email accounts was rare. We found no evidence that the use of personal email accounts was common, nefarious, or intentionally designed to circumvent laws such as the Freedom of Information Act. Rather, it appeared that non-MSU email accounts were used inadvertently or as a matter of convenience. Nevertheless, even the inadvertent use of non-MSU emails may have caused our investigation to be incomplete due to the inability of MSU to provide us with a complete set of records. The same is true for the use of text messages, which Trustees and University employees may have used to communicate.

Prior to concluding this Report, we informed the Board of our investigative gaps. The Board's position was that the University community deserved to know the results of our investigation promptly, and delaying our investigation in order to close every possible gap would be inconsistent with the community's desire to promptly learn the results of our investigation. Therefore, at the Board's direction, we did not review every email related to Title IX. Instead, as is the common practice in this field, we employed targeted searches of documents and information. Likewise, we relied on the personal interview statements of the Trustees, the President, and the University staff, who spoke directly to their review of the Title IX reports. When available, we relied upon emails to corroborate those statements.

D. The Investigative Team

Our investigative team was headed by Honigman partners with decades of experience in public- and private-sector investigations. They were assisted by several other Honigman lawyers as well as computer forensic, e-Discovery, and investigative experts retained to assist us with our

¹ Pseudonyms are used for the four former University employees listed in this Report.

investigation. The team has significant prior collective experience in investigating sensitive matters, including matters involving sexual misconduct at Michigan universities.

III. DISCUSSION

As noted above, Title IX prohibits discrimination on the basis of sex in educational programs and activities. In addition to and in furtherance of the federal requirements set forth under Title IX, Section 265b of MCL §388.1865b mandates that, to avoid a 10% reduction in operations funding, Michigan State University must “certify that its president or chancellor and a member of its governing board has reviewed all title IX reports involving the alleged sexual misconduct of an employee of the university.” Mich. Comp. Laws §388.1865b(2).

The following details the 2021 certification process as intended, the concerns raised before 2021 related to the process, and the ultimate failures in the process.

A. The 2021 Certification Process – Concerns Raised Before 2021

As the University headed into the 2021 certification process, it did so under the shadow of previous concerns raised about its 2020 certification. Under the 2020 process, the Title IX Office distributed the applicable Title IX reports to President Stanley and the pertinent Trustees three times, corresponding with the semester – January 9, 2020 (for Fall 2019); May 29, 2020 (for Spring 2020); and September 11, 2020 (for Summer 2020). To inform the President and Trustees about the impending state law deadline for University certification, Title IX Coordinator Jane Smith² emailed President Stanley and Board Secretary Denise Jones on September 24, 2020, again forwarding the applicable Title IX reports for review.

On October 2, 2020, at 12:21 p.m., (one day past the October 1, 2020 state law certification deadline), Board Secretary Jones forwarded the Title IX reports to the reviewing Trustees, who at that time included Trustees Dan Kelly, Renee Knake Jefferson, Brian Mosallam, Brianna Scott, and Kelly Tebay, stating:

Trustees: Per below, Jane Smith is seeking confirmation that the attached 9 final Title IX reports were reviewed by a member of the Board. The reports were sent on the various dates indicated below, prior to confirmation that the certification requirement would continue for this year. I know this is not the way you requested to receive the reports and there seems to be a misunderstanding of this. The certification is due today, so the hope is that the reports were previously reviewed when they were sent and that one or more Trustees can certify as to such. Can you please respond indicating which of the 9 reports, if any, you have reviewed? I have listed them below for your reference. (Email from Denise Jones to Dan Kelly, Renee Knake Jefferson, Brian Mosallam, Brianna Scott, and Kelly Tebay).

² Pseudonym.

In response, at least three Trustees voiced concerns about the process, and those concerns were shared with the Title IX Office and the MSU Office of General Counsel. For example, at 2:17 p.m., Trustee Knake Jefferson stated:

I am really concerned by this. When I joined the Board in December, I was informed that we would be doing regular, quarterly reviews as part of this “certification” process and that the next batch for review would be in April. I also requested guidance regarding how we are supposed to conduct the review, what we should be looking for, what the “certification” requires and is intended to achieve, etc. As you know, I have concerns in at least one instance that a final Title IX decision resulted in no finding yet contained conclusions rising to the level of warranting a finding, and I would like guidance regarding what to do if I find this to be true of other decisions that we are asked to review. Moreover, in this “certification” process, I believe that all of the Trustees reviewing the decisions should follow a standard format, since we might not view them in the same way. After we did not receive anything in April, I asked about this and was informed there was a delay due to COVID-19, which of course I understand. But I do not think it is acceptable to ask us now to certify these final decisions hours before the deadline on a Friday afternoon, with no guidance regarding how the “certification” should be conducted. (Email from Renee Knake Jefferson to Denise Jones, Dan Kelly, Brian Mosallam, Kelly Tebay, Brianna Scott, and cc to Brian Quinn).

At 2:40 p.m., Trustee Mosallam stated:

I am confused as well. Based on my communication with you [Board Secretary Jones], you said that Jane was sending reports throughout the year that did not require certification and now she is saying they do. Now you said Jane sent you a list of 135 reports and came back to you saying that only nine required certification which I do not understand why.

Any assumptions made that the Board were reading these reports does not make any sense to me. How would we have known which nine to read? This was poorly communicated. (Email from Brian Mosallam to Denise Jones and cc to Dan Kelly, Renee Knake Jefferson, Brianna Scott, and Kelly Tebay).

At 3:05 p.m., Trustee Scott stated:

I agree with Trustee Mosallam on this. We were very clear back in February that we anticipated each being given a stack of reports that would be assigned to each Trustee willing to review them. That was how it was handled in 2019 and I see no reason why we should

change now. There is no way any one of us is going to have the time to review ALL of the reports. I would ask to be assigned an equal volume of reports, be provided with the Certifications for the reports we are assigned and not be asked in any way to concur with the ultimate decisions that were made, because likely there will be some decisions we do not agree with.

I understand that Jane is new to her role. Perhaps it would be beneficial for someone to explain past practices to her and request she provide us with a better understanding what the requirements are, the timeframes and how to best satisfy our responsibilities as Trustees moving forward. (Email from Brianna Scott to Denise Jones, and cc to Dan Kelly, Renee Knake Jefferson, Brian Mosallam, and Kelly Tebay).

On October 2, 2020, at 3:42 p.m. and 3:44 p.m., Denise Jones forwarded the above emailed concerns from Trustees Knake Jefferson, Mosallam, and Scott to Title IX Coordinator Jane Smith and MSU General Counsel Brian Quinn. (Emails from Denise Jones to Jane Smith and Brian Quinn). On October 2, 2020, President Stanley signed the State of Michigan certification form. On October 7, 2020, the University certified to the State of Michigan that the University's review was complete.

Honigman was engaged to review the 2021 certification, not the 2020 certification. Nevertheless, during the course of our investigation, we observed – in addition to the concerns about the review of the 2020 Title IX reports – there were two problems with the 2020 state certification. First, it was not timely. Under MCL §388.1865b(1), the University was required to transmit its certification to the State of Michigan by October 1, 2020. President Stanley signed the State of Michigan certification form on October 2, 2020. The MSU Office of Financial Planning and Budget transmitted the certification to the State of Michigan Budget Office, the Senate Fiscal Agency, and the House Fiscal Agency on October 7, 2020.

Second, the certification was not sent to all of the correct State of Michigan recipients. We have observed no evidence that the 2020 state certification was transmitted to the Senate Appropriations Subcommittee on Higher Education or to the House Appropriations Subcommittee on Higher Education as required by MCL §388.1865b(1).

B. The 2021 Certification Process – In Effect

Trustees stated they had raised concerns about the Title IX certification process as early as 2019, and those concerns continued into 2020. And, multiple witnesses – including Trustees and senior University employees – reported the concerns the Trustees had raised continued into 2021. Witnesses recounted that the cumbersome certification process was frequently raised at monthly Board “workshop” sessions throughout the spring of 2021. Workshop sessions, which took place on the day prior to formal Board of Trustees meetings, included the Trustees, the President, and senior University leadership staff. During these sessions, the Trustees requested additional training and guidance from the Title IX Office and the MSU Office of General Counsel.

Below is the process that was followed in 2021:

i. The Title IX Office Sends the Title IX Reports to the President and the ARC Committee

The Title IX Office, in accordance with the normal course of its duties, compiled the 2021 Title IX reports and redacted them to remove any personally identifying information. The Title IX Office then grouped the reports in batches to correspond with the school's academic year. For 2021, the Office grouped the Title IX reports for Fall 2020, Spring 2021, and Summer 2021.

At three points during the 2021 academic year, Title IX Coordinator Smith emailed the Title IX reports to the President and to Board Secretary Jones. Jones then forwarded the reports to the ARC Committee, with a copy to Smith. In all of these communications from Title IX Coordinator Smith to Jones, Smith used the same language to explain what was sent: "Per the appropriations bill boilerplate, attached is the report identifying the relationship violence and sexual misconduct complaints with any corresponding final written determinations."

On February 25, 2021, Title IX Coordinator Smith emailed President Stanley and Board Secretary Jones the following Fall 2020 Title IX reports:

- (1) Case No. 2018-2272
- (2) Case No. 2019-0072
- (3) Case No. 2019-0161 & 2019-0162
- (4) Case No. 2019-0336
- (5) Case No. 2019-0097
- (6) Case No. 2019-0107
- (7) Case No. 2020-0511

On June 14, 2021, Title IX Coordinator Smith emailed President Stanley and Board Secretary Jones the following Spring 2021 Title IX reports:

- (1) Case No. 2018-0033
- (2) Case No. 2018-0056 & 2019-0250
- (3) Case No. 2020-0476
- (4) Case No. 2021-0027
- (5) Case No. 2020-1022
- (6) Case No. 2020-0102
- (7) Case No. 2020-1322

On August 13, 2021, Title IX Coordinator Smith emailed President Stanley and Board Secretary Jones the following Summer 2021 Title IX reports:

- (1) Case No. 2020-1091
- (2) Case No. 2020-0718

ii. The ARC Committee Reviews the 2021 Title IX Reports

In response to the emails above from Title IX Coordinator Smith containing the 2021 Title IX reports, Board Secretary Jones promptly forwarded Smith's emails to the ARC Committee Trustees. We interviewed all four of the ARC Committee members and reviewed their email correspondence related to their 2021 reviews. We reviewed the Internal Review forms received from the University; however, according to the University, they could not provide us with a complete set of Internal Review forms. We also reviewed the spreadsheets that assigned the reports to ARC Committee Trustees, and extrapolated from the conflicting data in the spreadsheets.

Dan Kelly

Trustee Kelly was assigned four Title IX reports for the 2021 academic year: (1) Report 2018-2272 (previously known as Report 2018-2735); (2) Report 2018-0033; (3) Combined Report 2018-0056 & 2019-0250; and (4) Report 2020-1091. Trustee Kelly returned an Internal Review form certifying that he read the Title IX reports for at least two of the four reports he was assigned. On March 1, 2021, Trustee Kelly certified that he reviewed Report 2018-2272, which was assigned to him for review in Fall 2020. Additionally, Trustee Kelly certified he reviewed Report 2020-1091, which was assigned to him for review in Summer 2021.

Trustee Kelly stated he read every report that had been sent and assigned to him in 2021. We find Trustee Kelly's statements credible.

Pat O'Keefe

Trustee O'Keefe was assigned four Title IX reports for the 2021 academic year: (1) Report 2019-0097; (2) Report 2019-0107; (3) Report 2020-0102; and (4) Report 2020-1322. Trustee O'Keefe returned an Internal Review form certifying that he read two Title IX reports; however, these were not the reports that were assigned to him. On August 17, 2021, Trustee O'Keefe certified on an Internal Review form that he reviewed Report 2020-0718 (which had been assigned to Trustee Knake Jefferson) and Report 2020-1091 (which had been assigned to Trustee Kelly).

Trustee O'Keefe stated he read every report that had been sent and assigned to him in 2021. We find Trustee O'Keefe's statements credible.

Renee Knake Jefferson

Trustee Knake Jefferson was assigned five reports for the 2021 academic year: (1) Combined Report 2019-0161 & 2019-0162 (previously known as Combined Report 2019-1851 & 2019-1854); (2) Report 2019-0336; (3) Report 2020-0718; (4) Report 2020-1022; and (5) Report 2021-0027. Trustee Knake Jefferson returned an Internal Review form certifying that she read at least one of the five reports she was assigned. On March 9, 2021, Knake Jefferson certified on an Internal Review form that she had reviewed Combined Report 2019-0161 & 2019-0162 (previously known as Combined Report 2019-1851 & 2019-1854).

Trustee Knake Jefferson stated that in 2021, she did not review the four other Title IX reports that had been assigned to her. Trustee Knake Jefferson explained that she did not read the reports, and in fact, did not open the files to view them, because she felt she was improperly trained

to review them. Trustee Knake Jefferson said in June 2021, she told Title IX Coordinator Smith that she would not be willing to read the reports until the Title IX Office came up with a satisfactory process for training the Trustees about proper ways to analyze and understand the substance and purpose of the reports. Trustee Knake Jefferson said she was concerned about the Board's fiduciary duty relating to reports that did not contain an adverse finding but contained corrective actions or recommendations, and she also expressed concerns about uniformity, tracking, and enforcement related to the reports. Trustee Knake Jefferson said she first raised her concerns with the University administration in December 2019. Her concerns from 2020 are documented in Section III(A) of this Report, and she said she continued to voice concerns in 2021.

Trustee Knake Jefferson stated after she explained her concerns to Title IX Coordinator Smith, Knake Jefferson never heard back in a substantive manner from Smith on this topic. Knake Jefferson presumed the Title IX Office reassigned her 2021 reports to another Trustee for review.

We find Trustee Knake Jefferson's statements credible.

Brianna Scott

Trustee Scott was assigned three Title IX reports for the 2021 academic year: (1) Report 2019-0072; (2) Report 2020-0511; and (3) Report 2020-00476. However, Trustee Scott did not review any of the reports and did not complete any Internal Review forms.

Trustee Scott said her concerns first began while she was reviewing the Title IX reports in 2019. Trustee Scott stated that over time, she and her Trustee colleagues began to feel they did not believe the reviewing process was complete. Trustee Scott felt the Trustees needed a better system to understand the substance of the Title IX reports they were reviewing. Trustee Scott said she raised these concerns to the Title IX Office in 2019. Some of her concerns from 2020 are documented in Section III(A) of this Report.

Trustee Scott further explained that by 2021, the Title IX Office had still not addressed her apprehensions. Trustee Scott stated that, at one or more work sessions, she said she would not read the reports due to her concerns. Trustee Scott was concerned the Trustees were not allocated adequate time to discuss their review of the reports with the Title IX Office. Trustee Scott said she also had concerns that the University did not have an appropriate system to track allegations of repeat offenses from the same employee, the same University program, or the same University department.

We find Trustee Scott's statements credible.

iii. The President Reviews the 2021 Title IX Reports

President Stanley explained that in 2021, Title IX Coordinator Smith emailed him the Title IX reports. President Stanley said he was working remotely due to the pandemic, so he did not have anyone assist him in receiving the reports. He said he would download the reports onto his laptop for viewing. President Stanley said he would read them and make notes on a scrap piece of paper to keep track of his progress, and then discard the paper when he was finished. He said he would then tell his assistant that he had reviewed all of the reports.

President Stanley’s emails, as well as his descriptions of the Title IX reports, corroborated his statements. On September 5, 2021, after having received the Title IX reports from Title IX Coordinator Smith, President Stanley emailed his assistant, stating: “Material reviewed. Can fill out the form and sign.” Two days later, on September 7, 2021, President Stanley signed his Internal Review form, acknowledging that he had reviewed all of the Title IX reports for 2021. That same day, the President’s assistant emailed the President’s Internal Review form to Title IX Coordinator Smith.

President Stanley said he read every report Title IX Coordinator Smith sent him in 2021. We find President Stanley’s statements credible.

iv. The Title IX Coordinator Informs the University that the Trustees and the President have Reviewed the Reports

On September 21, 2021 at 2:15 p.m., Title IX Coordinator Smith emailed Michigan State University Budget Officer Mark Roberts.³ The subject line of Smith’s email was, “Checking in Re October Deadline: All Title IX Reports have been reviewed, etc...” Smith wrote:

Hi Mark: I hope this email finds you well. I am sure you are incredibly busy but I wanted to let you know the following has been completed:

All of the Title IX final determinations have been reviewed by at least one trustee on the Board as well as the President per 265b(2). (Email from Jane Smith to Mark Roberts and cc to Lauren Woodworth and Evette Chavez).

On September 21, 2021 at 4:14 p.m., MSU General Counsel Brian Quinn emailed Smith and MSU Senior Vice President for Government Relations Kathleen Wilbur, and copied Assistant Vice President Jeff Morgan.⁴ Quinn wrote: “Jane: I didn’t see anything in Denise’s materials regarding the reports and certifications by the October 1 deadline. Were you planning to provide the forms?” Smith responded at 5:51 p.m.:

Hi Brian: The forms were sent along with the reports each semester over the last year. Trustee Byrum reviewed all of them (also confirmed during a call and contemporaneous documentation) and I have signed certifications from other trustees who were assigned reports. I also have President Stanley’s certification. In short: Based upon [the] information provided to me, at least one Board member reviewed the reports and the President reviewed all of them. (Email from Jane Smith to Brian Quinn and Kathleen Wilbur, and cc to Jeff Morgan).

³ Pseudonym.

⁴ Pseudonym.

The following day, September 22, 2021, at 10:23 a.m., Title IX Coordinator Smith elaborated on this process in an email to General Counsel Quinn:

The process for the last two years has been as follows: My position handles obtaining confirmation that all reports have been reviewed and I do this per the process that was agreed upon by OGC and the Board (as set out in the PowerPoint slide deck that Brian and I presented on). Between the certifications (the form was approved by OGC) and Trustee Byrum's statements, all final Title IX determinations have been reviewed. My position sends an email to Budget officer Mark Roberts. I do not send anything directly to the state. Mark fills out the electronic form that he is provided by the state. (Email from Jane Smith to Brian Quinn and Kathleen Wilbur, and cc to Jeff Morgan).

v. The President Signs the State of Michigan Certification Form

On or about September 30, 2021, an employee from the MSU Office of Financial Planning and Budget delivered the State of Michigan certification form to the President's office. President Stanley signed the form on September 30, 2021. In doing so, he affirmed the following:

The university certifies that its president or chancellor and a member of its governing board has reviewed all title IX reports involving the alleged sexual misconduct of an employee of the university. Answering No may result in the withholding of 10% of the university's annual operations funding until compliance is met [grammar original].

I certify that the information given above is accurate to the best of my knowledge.

President Stanley said he signed the form for three reasons. First, he relied on the Title IX Coordinator to ensure the Trustees had completed their review. Second, he believed if the Trustees' review had been incomplete, the Office of Financial Planning and Budget would not have sent him the certification form to sign. Third, he had no reason to think the Trustees had not reviewed the Title IX reports. President Stanley said if he had known the Trustees had not reviewed the reports, he would not have signed the certification form.

vi. The Budget Office Transmits the Certification Form

On October 1, 2021 at 9:13 a.m., an employee of the Office of Financial Planning and Budget emailed the President's signed certification form to the State of Michigan Budget Office, the Senate Fiscal Agency, and the House Fiscal Agency.

C. The University's 2021 Certification is Questioned, and the Investigation Begins

On June 22 and 23, 2022, the Board of Trustees, the President, and senior University employees held a regularly scheduled planning meeting. During a discussion of Title IX compliance, Trustee Brianna Scott disclosed to the full Board and President that she had not reviewed any of the Title IX reports that had been assigned to her in 2021. Trustee Knake Jefferson also made known that she did not review all of her assigned 2021 Title IX reports (as she had told Smith in June 2021). These disclosures immediately raised a significant question: Was the University's 2021 Title IX certification to the State of Michigan, in which the President certified that he and a member of the Board of Trustees had reviewed all Title IX reports, accurate?

For the President's certification to be accurate, at least one Trustee, or a combination of Trustees, must have reviewed all of the relevant 2021 Title IX reports. Over the course of the 2021 academic year, Title IX Coordinator Smith sent 16 reports to the reviewing Trustees on the ARC Committee, and the Trustees responded as follows:

- Trustee Kelly stated he reviewed 4 of the 4 reports he received.
- Trustee O'Keefe stated he reviewed 4 of the 4 reports he received.
- Trustee Knake Jefferson stated she reviewed 1 of the 5 reports she received.
- Trustee Scott stated she reviewed 0 reports of the 3 reports she received.

Thus, at the conclusion of the ARC Committee review, according to the statements of the Trustees, seven reports were not reviewed. If another Trustee had reviewed those seven reports, then the University would have fulfilled its obligation to have all Title IX reports reviewed by a Trustee and the President, and the University's certification to the State of Michigan would be accurate. However, if any of the seven reports were not reviewed by a Trustee, then the University's certification would not be accurate.

On August 22, 2022, the Board of Trustees retained Honigman to investigate whether the University's certification was accurate. To determine the accuracy of the University's certification to the State of Michigan, Honigman sought to determine which Trustees reviewed the 2021 Title IX reports. The verbal explanations and documentary evidence reviewed from four of the Trustees above (Dan Kelly, Renee Knake Jefferson, Pat O'Keefe, and Brianna Scott) showed that those Trustees did not read all of the Title IX reports. As for the remaining four Trustees, three of those four Trustees (Melanie Foster, Kelly Tebay, and Rema Vassar) told us they did not review any Title IX reports for academic year 2021, and the evidence we reviewed related to those Trustees did not conclusively establish otherwise. The answer, therefore, depended on the following: Did Trustee Byrum review the 2021 Title IX reports that Trustee Knake Jefferson and Trustee Scott declined to review?

IV. RECONCILIATION OF CONFLICTING ACCOUNTS

A. Trustee Dianne Byrum

We interviewed Trustee Byrum on September 15, 2022 and October 14, 2022. Trustee Byrum stated she did not review any Title IX reports during academic year 2021. Trustee Byrum said the reports were sent to the members of the Board's ARC Committee. Trustee Byrum explained that she is not a member of the ARC Committee, so she did not review any of the reports. She further explained that because she is not on the ARC Committee, she did not have any responsibility to review the reports.

We presented Trustee Byrum with three emails that Title IX Coordinator Jane Smith sent to various MSU employees regarding Trustee Byrum's alleged review of the Title IX reports:

- (1) September 7, 2021, 11:44 a.m., from Smith to Lauren Woodworth and cc to Evette Chavez: "FYI, on August 23, 2020, Trustee Dianne Byrum called me. During that call, she stated that she, too, reviews all reports and final determinations, which was indicated by her familiarity with matters."
- (2) September 21, 2021, 5:51 p.m., from Smith to Brian Quinn and Kathleen Wilbur, and cc to Jeff Morgan: "Hi Brian. The forms were sent along with the reports each semester over the last year. Trustee Byrum reviewed all of them (also confirmed during a call and contemporaneous documentation) and I have signed certifications from other trustees who were assigned reports."
- (3) September 22, 2021, 10:23 a.m., from Smith to Brian Quinn and Kathleen Wilbur, and cc to Jeff Morgan: "Between the certifications (the form was approved by OGC) and Trustee Byrum's statements, all final Title IX determinations have been reviewed."

Trustee Byrum said she had no knowledge of Smith's statements in the three emails until a University employee had recently brought the emails to Byrum's attention. Trustee Byrum stated that prior to learning about the emails, she did not even know the emails existed.

Trustee Byrum did not recall any conversation with Smith around August 23, 2020 or August 23, 2021. She said she never had a conversation with Smith where Byrum told Smith that she had read the Title IX reports. Trustee Byrum was adamant that Smith's statement was not true, and a conversation about this topic with Smith did not occur.

Trustee Byrum further explained that she rarely interacted with Smith, even through email. To the extent Trustee Byrum had interactions with Smith, it was typically relayed through Board Secretary Jones. Regarding telephone conversations, Trustee Byrum recalled only one phone call with Smith in either 2020 or 2021. Trustee Byrum said the call concerned a Title IX spreadsheet. While Trustee Byrum did not remember exactly what was said in this conversation, she did remember she had only general questions about the spreadsheet.

Trustee Byrum also explained that Smith was aware Trustee Byrum knew the difference between the Title IX spreadsheet and the Title IX reports. Byrum stated Smith also knew Trustee Byrum was not on the ARC Committee, and would not have reviewed the reports. Trustee Byrum could not speculate as to why Smith would say Trustee Byrum read the reports. However, Trustee Byrum was emphatic that she did not review the Title IX reports and she did not have a phone conversation with Smith stating she reviewed them.

B. Title IX Coordinator Smith

We interviewed Jane Smith on September 23, 2022. Smith began the interview by stating that in her role, she did not have an audience with the Board or access to the Board. Shortly after the interview began, and without prompting, Smith volunteered that Trustee Byrum had reviewed all of the Title IX reports when they had been sent to the Trustees in 2021. Smith repeated this statement twice before we introduced this topic into the conversation.

In the first half of the interview, Smith discussed her background and the general process for creating, editing, redacting, and reviewing Title IX reports. Approximately halfway through the interview, we presented Smith with the email she sent to MSU General Counsel Brian Quinn on September 21, 2021 at 5:51 p.m., and gave her time to review it. At this point, Smith's demeanor noticeably changed. She stopped smiling, began breathing quicker, and started speaking more rapidly. She took off her glasses, put her head in her hands and repeatedly started rubbing her face and head. She began fidgeting with the paper in front of her. She then started clasping her hands tightly in front of her while leaning forward in a crouched position while continuing to rub her head and hair.

We asked Smith to explain how she knew Trustee Byrum had reviewed all of the reports. Smith first answered, "I can't remember." She then said it could be that Board Secretary Jones told her that information. Next, Smith stated again that she could not remember. Then, Smith said in 2021, Trustee Byrum told her directly that she had reviewed all of the reports.

Smith first said she could not remember if she had received an email from Byrum, or if she had spoken with Byrum in person, or if this conversation had been over the phone. Smith then said the conversation was not in person. She next said the conversation could have been over email. Smith then said the discussion would have been in a phone call. Smith said she did not call Trustee Byrum. She said Board Secretary Jones had emailed her and asked Smith for her cell phone number, and Smith emailed Jones her number. Sometime thereafter, Smith said, Byrum called her.

Smith said Byrum called her and told her, regarding the Title IX reports, "I read them all." [Read in past tense]. Smith said she could not remember when this conversation purportedly took place. When asked to explain more details about her conversation with Trustee Byrum, Smith's breathing became more rapid. She began looking at her watch. Smith stood up quickly and said she needed to take a break so she could send someone a text message. We paused while she apparently sent a message from her phone.

When the interview resumed, Smith said she had a conversation with someone who said Trustee Byrum had read all of the Title IX reports in 2020 as well. Smith could not remember

who told her this. Smith further explained that even though she believed Trustee Scott and Trustee Knake Jefferson did not review their 2021 Title IX reports, the Scott and Knake Jefferson reports did not need to be redistributed to other Trustees, because Byrum had read all of the reports and the University was therefore in compliance with state law. Smith said she spoke with Trustee Byrum about the Title IX reports and not any other Trustee because Byrum received all of the Title IX reports. She also said Byrum was on the Board's "Risk Committee."

Smith added this was not the only time Byrum had called her about Title IX reports in 2021. She said Byrum called her "a few times" – fewer than 10 – with questions about the reports, and it was clear to Smith that Byrum was knowledgeable about the reports because Byrum asked detailed questions. Smith said Byrum would call her about high-profile cases, but Smith never thought Byrum was interfering with the process. Smith said Byrum called her to talk about how one of the reports was poorly written. Smith said Byrum never asked her to change any reports or do anything improper.

We asked Smith to explain what the "contemporaneous documentation" was that she referenced in her September 21, 2021 email supporting Smith's claim that Trustee Byrum had reviewed the Title IX reports. Smith first answered, "I don't know." She then stated, "I can't recall."

At the conclusion of the interview, we told Smith that Trustee Byrum said Byrum did not tell Smith that Byrum had read the Title IX reports. Smith stated, "Uh-oh." Smith provided no further substantive comments.

V. ANALYSIS

We find Trustee Byrum's version of the facts to be more credible. Title IX Coordinator Smith maintained a spreadsheet listing which Trustees reviewed the 2021 reports. Smith's spreadsheet listed Trustees Kelly, Knake Jefferson, O'Keefe, and Scott – but never Trustee Byrum. Additionally, Smith conceded both during her interview and in her email communications that it was her duty to collect Internal Review forms from Trustees who reviewed reports. However, there is no evidence Smith ever asked Trustee Byrum to complete an Internal Review form, and likewise no evidence that Byrum completed one.

Furthermore, Smith emailed the Title IX reports to Board Secretary Jones on three dates in 2021: (1) February 25; (2) June 14; and (3) August 13. Each time, Smith stated the reports "are for review by President Stanley and members of the Board of Trustees Committee on Audit, Risk, and Compliance." Smith added, "For the convenience of the Audit, Risk, and Compliance Committee members, each final determination designates the reviewer in the file name." Smith or her office listed the names of the Title IX reviewers as Trustees Kelly, Knake Jefferson, O'Keefe, and Scott – but never Trustee Byrum. Trustee Byrum, it should be noted, was never a member of the ARC Committee.

The evidence indicates Smith knew how to add another Trustee to the list of reviewers. In her August 13, 2021 email to Board Secretary Jones, Smith explained the Title IX reports "are for review by President Stanley and members of the Board of Trustees Committee on Audit, Risk, and Compliance, and Trustee Tebay." Trustee Kelly Tebay had reviewed some reports in 2020 and

asked to be part of the 2021 process, and Smith included Tebay on her August 13, 2021 email list of reviewers. However, Smith never added Trustee Byrum to the list of reviewers.

Additionally, when Board Secretary Jones forwarded Smith's Title IX reports to the ARC Committee Trustees on February 25, June 14, and August 13, 2021, Jones copied Smith on those emails. Jones's emails were sent to Trustees Kelly, Knake Jefferson, O'Keefe, and Scott, and once to Tebay – but not to Byrum. In fact, on each of those dates, Smith forwarded Jones's email – never voicing concern that Trustee Byrum was excluded from receiving the Title IX reports. And, although on June 14, 2021, Jones sent a second email forwarding the Title IX reports to the entire Board of Trustees, copying Smith, that action is not evidence that Trustee Byrum reviewed any of the reports. In fact, even if Trustee Byrum had received all of the Title IX reports in the past – as Smith also alleged – that, too, would not be evidence that Trustee Byrum reviewed the reports.

Finally, Trustee Byrum was steadfast in her position that she never told Smith that she had read the 2021 Title IX reports. Trustee Byrum spoke clearly, confidently, and without hesitation. At no time did Trustee Byrum waver in her position or offer any conflicting explanations.

Smith's explanation is less persuasive. When asked if Trustee Byrum had told Smith that Byrum had read all of the 2021 Title IX reports, Smith repeatedly changed her story and contradicted herself. She spoke in a circular fashion. Her body language exhibited many of the classic signs of deception. Perhaps most significantly, when Smith learned that Trustee Byrum disagreed with Smith's story – which was tantamount to Byrum calling Smith untruthful – Smith's response was simply, "Uh-oh." Smith did not say, for example, "Byrum is mistaken," or "that's not correct." Smith did not appear surprised in any way that Trustee Byrum disagreed with Smith. When confronted with Trustee Byrum's position, Smith said nothing to defend her own position.

Smith's explanation about her interaction with Board members is also not persuasive. Smith explained that she did not have direct contact with Board members because that would be "inappropriate." But Smith herself, in fact, gave a presentation to the Board on June 16, 2021. And, Smith said she had direct communication with at least three Trustees – Byrum, Knake Jefferson, and Mosallam. Furthermore, we confirmed with Smith's supervisor – President Stanley – that it would not be "inappropriate" for Smith to have direct contact with Board members.

Additionally, the emails we received do not support Smith's position. We found no email from Board Secretary Jones to Smith in which Jones asked Smith to send Jones her cell phone number. We also found no email where Smith sent Jones her cell phone number. We acknowledge that on September 7, 2021, Smith emailed her colleagues in the Title IX Office the following: "FYI, on August 23, 2020, Trustee Dianne Byrum called me. During that call, she stated that she, too, reviews all reports and final determinations, which was indicated by her familiarity with matters." This email does give some credence that a conversation between Smith and Byrum took place. But even presuming Smith and Byrum spoke, the conversation related to the 2020 Title IX reports, not the 2021 reports.

* * *

The evidence does not establish that the Board of Trustees reviewed all of the 2021 Title IX reports. Accordingly, the President's certification to the State of Michigan was not accurate.

The University failed to properly certify under Michigan law that Michigan State University’s President and a member of the Board of Trustees reviewed all Title IX reports involving the alleged sexual misconduct of an employee. However, the Board of Trustees took proactive steps in 2022 to ensure that the President and at least one Board member had reviewed every 2021 Title IX report.

VI. RECOMMENDATIONS FOR IMPROVEMENT

Significant breakdowns in the University’s Title IX reporting process prevented the University from properly certifying. The University lacks a unified process for tracking Title IX reports, ensuring they are reviewed, and certifying to the State that the reports have been reviewed. The University also lacks a mechanism to reliably track and monitor Title IX reports.

Honigman was charged with developing recommendations the University could take to avoid any future similar problems and improve the process. We based our recommendations on our findings and a review of past and current University actions. Whether to follow these recommendations – and how to implement them if followed – is a decision left entirely to the University.

A. Recommendations Related to the Mechanics of Review

Establish a Single Point of Contact Responsible to Ensure Proper Certification. We interviewed University employees who, had they taken the initiative, could have taken additional steps to help ensure that at least one Trustee received and reviewed all of the Title IX reports. However, each employee declined to take responsibility for getting the job done. Although all of these employees had the authority to proactively assist in the process, each declined and offered justifications such as: “I was not asked to do that” (Employee A); “I wasn’t trained to be concerned about that” (Employee B); and “It wouldn’t be my responsibility to do that” (Employee C). Some of these employees explained that this duty was not in their written job description. The lack of accountability in a single person resulted in what Employee B described as, “No one knew who was doing what.”

The University should identify a single individual who ensures the certification process is completed. This responsibility should be placed directly in the person’s written job description. The person must be in a position to communicate with both the President and the Board. Possible candidates include the Associate Vice President for the Office for Civil Rights and Title IX Education and Compliance; the Title IX Coordinator; the General Counsel; or the Secretary of the Board of Trustees.

Create Consistency in the Manner in which the Trustees and President Receive and Review Reports. The process for distributing and reviewing Title IX reports is not uniform. Between 2020 and 2022, the Title IX Coordinator distributed reports to the Trustees in several different ways. Some reports were emailed; some were uploaded to an electronic portal; some were uploaded to a different electronic portal; and some reports were printed and distributed as a physical copy. Often the emailed files were so large they had to be sent in multiple emails, and occasionally the files would not transmit at all. The Title IX Office sometimes re-sent the reports without a clear explanation of what was being sent. Adding to the confusion, the Title IX Office

sent the reports three times during the year; this led to misunderstanding among the Trustees as to which reports had already been received and reviewed.

A better system would be to establish a single electronic portal for viewing Title IX reports. The Trustees and President could view the reports electronically and understand which reports were assigned to them. Such a system would create an electronic record for which reports had been received and reviewed. It would also eliminate any confusion regarding which reports are assigned to which Trustee.

Create Consistency in the Manner in which the Trustees and President Certify the Reports. There was not a consistent method in which the Trustees communicated that they had reviewed the reports. Internal Review forms were only occasionally submitted, and there was not one consistent person designated to receive the forms. The Internal Review forms were also supposed to be tracked on an internal document system, but this process was not always followed. And, the tracking process was cumbersome; the Title IX Office used spreadsheets that were difficult to read, inaccurate, and that quickly became outdated.

A better system would be to establish an electronic reminder system that works in tandem with the electronic review portal. The Trustees and President could receive automated reminders until they complete their review. Additionally, the progress of each reviewer could be visible to the Board and the President in order to facilitate transparency and accountability. If a Board member fails to complete the Internal Review form timely, the entire Board, the University's General Counsel, the President, and the pertinent University staff could be notified.

Make the Reports More Readable. State law requires most names in Title IX reports to be redacted to protect confidentiality. The Title IX Office redacts reports by placing black marks over the names of the people involved. As a result, the reviewer is forced to read a report packed with black ink where the reviewer cannot distinguish between the witnesses or subjects in the report. A better redaction system would be to replace the redacted name with a pseudonym, such as "Witness 1" or "Person A."

B. Recommendations Related to Internal Review of Title XI Reports

Create a Mechanism to Track Repeat Offenders. Trustees have raised concerns that there is no effective way to track Title IX reports that involve allegations of repeat offenses from the same employee, the same University program, or the same University department. An effective tracking mechanism could follow the Title IX reports through the entire process, including the reviews by the Board and the President. To address these concerns, the Title IX Office should clearly communicate to the Board and the President which allegations involve repeat offenders.

Establish Regular and Recurring Training for Trustees. The President and the Trustees also expressed concerns about proper training related to their review of the Title IX reports. Their concerns have still not been fully addressed. The University should create a clear and comprehensive training session to be presented to the Trustees on a regular basis that explains (1) the Michigan and Federal Statutes regarding Title IX and the Title IX reports; (2) the reviewer's role in reviewing the Title IX reports; (3) the step-by-step process for receipt, review, and submission of the Internal Review form; and (4) the process for reporting issues or concerns with

the Title IX reports. This training could be given at work sessions held prior to Board of Trustee meetings. Regardless of whether a Trustee is an ARC member, all Trustees could benefit from training about the process and its importance.

Create a Standardized Referral Process for a Second-Look at Serious Allegations. Trustees explained there is no consistent mechanism for a Trustee to refer certain Title IX reports for a secondary review by an independent outside investigator. The Board should consider further discussion on this topic, with an option for creating a standard rubric for referral for outside review.

Conduct Regular Audits of the Title IX Process. On September 13, 2022, the University's Office of Audit, Risk, and Compliance completed a review of the Title IX certification process. Based upon the information available to us, this appears to be the only review ever performed by the University related to the efficacy of the Title IX certification process. Given the heightened reputational and litigation risks associated with Title IX misconduct, we recommend the University conduct regular periodic reviews of the Title IX certification process until the Board and the President are satisfied with the sufficiency of the process.

Maintain and Distribute Tracking Data Related to Investigation Findings. We recommend the University more consistently track data related to the final Title IX determinations by alleged conduct type and investigator. This data will help to evaluate whether certain types of alleged conduct are being adjudicated in a consistent manner.

C. Recommendations Related to the Logistics of Certification to the State of Michigan

Improve the Timeliness of Reporting. The state law deadline for certifying that Title IX reports have been reviewed is October 1. Our investigation found that in 2020, the President did not sign the certification form until October 2, 2020. The MSU Office of Financial Planning and Budget did not send the certification form to the State of Michigan until October 7, 2020. The root of this delay appears to stem from the problem described above that no single person is accountable for ensuring the certification process is completed.

We recommend the University increase training to those involved in the Title IX certification process about the October 1 deadline. To the extent possible, we recommend the University transmit the certification no later than September 30 each year.

Transmit the Certification to the Proper Locations. State law requires the University's certification to be sent to five locations: (1) the State Budget Director; (2) the Senate Fiscal Agency; (3) the House Fiscal Agency; (4) the Senate Appropriations Subcommittee on Higher Education; and (5) the House Appropriations Subcommittee on Higher Education. Our review found the University transmitted its certification to just three of these five locations. We found no evidence that the certifications were sent to the Senate and House Appropriations Subcommittees on Higher Education prior to 2022.

The University is not entirely to blame for this error. The State of Michigan Budget Office provides the University with a blank template form for certification. The MSU President signs and dates the form and sends it back to the State. At the bottom of the form, the State Budget Office explains: "Please return an electronic copy of this completed form to" specific individuals

in the State Budget Office, the Senate Fiscal Agency, and the House Fiscal Agency. The State's own form does not list the Senate or House Appropriations Subcommittees.

The solution to this problem is, moving forward, the University should ensure that it transmits its certification form to all five of the required locations. We note that the Appropriations Subcommittees have been renamed the Senate Appropriations Subcommittee on Universities and Community Colleges and the House Appropriations Subcommittee on Higher Education and Community Colleges.

Given the importance of maintaining a positive relationship with the Senate and House Appropriations Subcommittees, we further recommend the University better inform the MSU Office of Government Relations about the Title IX certification process. At a minimum, when the Office of Financial Planning and Budget emails the certification form to the Legislature, the Budget Office should copy the Senior Vice President for Government Relations on the email. That way, the Office of Government Relations would be alerted to a communication with the Legislature on this significant topic.

D. Other Miscellaneous Recommendations

The University May Consider Punitive Actions in the Event of Future Failures to Properly Certify. We found that employees who had the ability to alert the necessary parties of the impending inaccurate certification remained silent. Instead, they blamed others for the University's failure to properly certify. Indeed, one of the key findings of this investigation was a lack of ownership in the certification process. The University may wish to consider employment-related penalties for University employees who fail to properly complete their duties related to review and certification including, where applicable, financial penalties.

Require University Business to be Conducted on University E-mail Accounts. As a matter of best practice, the use of non-MSU email accounts should be discouraged. Our investigation found the Title IX Office communicated with some Trustees via the Trustees' non-MSU email accounts. Some of these emails related to Title IX reports and other sensitive information. These emails were infrequent, and we did not uncover any evidence to suggest that non-MSU emails were being used for any nefarious purpose. Nevertheless, the use of non-MSU email accounts should be avoided.

VII. CONCLUSION

Honigman concludes that although the University failed to meet its State of Michigan Title IX reporting obligations in 2021, the Board of Trustees took proactive steps in 2022 to ensure the President and at least one Board member had reviewed every 2021 Title IX report. The President's 2022 certification to the State of Michigan, which certified the University's 2022 review and re-certified the University's 2021 review, was accurate.

The University now has an opportunity for process improvement for the review and tracking of future Title IX reports. In fact, the University has already taken steps to improve the process by utilizing an electronic portal to receive and review reports.

The Board of Trustees, President Stanley, and current University staff were highly cooperative with our investigation. We believe this cooperation benefited both our investigation and the University as a whole.

Finally, by directing us to engage in this investigation, the Board of Trustees expressed their desire to have an effective, improved, and legally compliant Title IX certification process. We hope the recommendations included here will improve Michigan State University's procedures for many years to come.