



Michigan House of Representatives

Anderson House Office Building
Lansing, Michigan 48909-7514

April 5, 2018

Speaker Tom Leonard
Michigan House of Representatives
164 Capitol Building
Lansing, MI 48933

Speaker Leonard,

In January, you asked our committees to launch inquiries concerning Michigan State University's handling of the Larry Nassar case and to identify policy and budget solutions to prevent such a tragedy from happening again. We would first like to thank you for your leadership on this issue, for entrusting us with these important tasks, and for your support.

Since January, we have worked with the members of the Law and Justice Committee and the Appropriations Subcommittee on Higher Education – Republican and Democrat – as well as policy advisors and counsel, to find out what happened at MSU, and to make informed policy and budget recommendations. We have requested, received, and reviewed thousands of pages of documents from MSU, as well as written answers to approximately 50 detailed questions posed by committee members. A copy of those questions and answers is attached to this letter.

In addition, we have met with numerous survivors of Larry Nassar and listened to their stories. The courage shown by the survivors in telling what happened to them and advocating for change has been inspirational, and their input has been instrumental in this process.

Members of the MSU community also reached out to share their perspective on the systemic failures which may have helped facilitate incidents of sexual misconduct. Their statements were enlightening, and they have shed light on institutional defects which clearly warrant change.

Our inquiries led to numerous findings, some of which were alarming enough to convey to law enforcement for further investigation. While ongoing criminal and civil investigations promise a more detailed public account of MSU's handling of the Nassar case, a summary of the key findings we can disclose is as follows:

- From 2014 to the present, at least 243 survivors reported abuse by Larry Nassar to the MSU Police Department. Most of the survivors were minors at the time of the abuse. And while many survivors were gymnasts, others were not. In addition, since Rachael Denhollander's Title IX complaint in 2016, MSU has received 91 other Title IX complaints against Nassar.
- Nassar seems to have spent decades developing his ability to abuse patients without detection by identifying and exploiting loopholes in the policies that governed his professional conduct and patient relationships. This was exacerbated by what appears to have been an increasing self-awareness of his distinguished reputation and the great trust placed in him by patients and the community. To illustrate:

- Medical records were never kept for many of Nassar’s “treatments,” and numerous records that were kept lacked any reference to the sensitive nature of the “treatments” (e.g., intravaginal). We are not aware of any specific MSU policy then in place which prohibited such conduct.
 - Nassar attempted to use this to his advantage in the 2016 Title IX investigation against him in which the complainant asserted Nassar’s treatment included vaginal and rectal penetration. While he first told investigators he did not recall treating her, after reviewing her medical records to refresh his recollection, he confidently argued that there was no penetration (apparently because there was no reference to such).
- MSU did not have an adequate informed consent policy in place for much of the period examined, which Nassar methodically exploited.
 - When Nassar starting performing his treatments in the 1990s, it appears he took careful steps so they would be perceived as medically appropriate, such as by explaining the procedure to the patient with a pelvic model demonstration and providing informational materials prior to treatment. The evidence reviewed demonstrates that his conduct shifted over time as he became more aware of what he could get away with. By the late 1990s and early 2000s, it appears he occasionally would only mention that he was going to adjust the pelvic bone, for example, without fully explaining the procedure. By 2014, he seems to have felt confident enough to abuse his patients without any prior notice or explanation whatsoever of the purported medical treatment. By 2016, he was self-assured enough to readily admit to investigators that he “does not get written consent from the patient before treatment” and even testified that “unless the patient stops him, he is assuming the patient understands.”
- MSU’s policies did not require a chaperone or other person to be present in the exam room during sensitive examinations or treatments of minors for much of the period examined, which Nassar took full advantage of on multiple occasions.
- In some cases, MSU had destroyed the survivors’ medical records by the time the survivors reported Nassar to the MSU Police. While the evidence reviewed demonstrates that such records may have proven useful to at least one of the survivors seeking justice against Nassar, MSU’s destruction of the records appears to have been in compliance with both state law (requiring retention for seven years) and MSU’s record retention policy (requiring retention for ten years).
- Nassar did not solicit or receive payments from patients or their insurers for many of the “treatments” he performed, including those at his home and at Twistars, which should have raised questions about his motives to investigators much earlier than it did.
- MSU failed to properly investigate Nassar in response to the Title IX complaint filed by Amanda Thomashow in 2014. By doing so, it may have enabled the abuse of others which otherwise might have been prevented.¹ Its failings include the following:

¹ We feel compelled to note MSU appears to defiantly and wrongfully maintain it did not mishandle this investigation. For example, MSU defends the conclusion of the 2014 report finding Nassar’s abuse of Ms. Thomashow was medically appropriate on the basis that the facts of her case were materially different from those of a later investigation which reached the opposite conclusion. See attached, Question 9. The university also tries to minimize the significance of different reports going to the complainant and Nassar

- MSU erroneously concluded Nassar did not engage in misconduct and almost entirely based this conclusion on the flawed testimony of biased medical experts.
 - MSU failed to utilize truly independent medical experts to determine whether Nassar’s conduct was medically appropriate. Astonishingly, one of the witnesses was hand-picked by Nassar himself, while two others were suggested by then-Dean William Strampel. They were Nassar’s long-time colleagues and associates who knew him on a personal level, with one, Dr. Lemmen, even admitting to being one of his “very close friends.” Such familiarity with the subject of the investigation presents a clear conflict of interest which should not have been ignored. To further illustrate, one expert, Dr. DeStefano, told the investigator “she would never say that [Nassar] would have any intent in exam other than purely professional.” But if she was not willing to ever say that, no matter what the evidence against Nassar was, then why would MSU rely on, or even ask for, her opinion on whether he did in fact have such intent?
 - The reasoning used by most of the experts, and relied upon by the investigator, was fallacious at best. They mostly provided circular justifications, such as Nassar’s reputation, for their conclusion that his conduct was medically appropriate (i.e., his work is medically appropriate because he is so well known and famous for his medical work).
- MSU sent Ms. Thomashow a materially different version of its Title IX report than it sent to Nassar and others internally. The added language in the version which went to Nassar, which points to the potential need for corrective actions, is difficult to reconcile with the report’s conclusion that misconduct did not occur. In addition to a lack of transparency and fairness, this discrepancy demonstrates an office culture more focused on protecting the institution than survivors. And MSU’s admission that this may have occurred in other cases is troubling.
- Inexplicably, Ms. Thomashow was not provided with the ability to appeal the investigation’s report or conclusions, per MSU’s policy then in place.
- Then-Dean William Strampel imposed corrective protocols on Nassar, including having others present during sensitive treatments and minimizing skin-to-skin contact, and, as stated by MSU, “it was the responsibility of COM Dean Strampel to implement and monitor compliance with the agreed-upon protocols.” Yet Mr. Strampel, and by extension MSU, failed to follow up and enforce the protocols.
- Several survivors stated they reported Nassar’s abuse to MSU employees around the time of the incidents, and years before the public learned of Nassar’s crimes. Yet MSU confirmed its Office of Institutional Equity did not receive any reports regarding Nassar from MSU coaches or athletics staff prior to his termination in September 2016.

by relying on such being consistent with the university’s Title IX obligations. See attached, Question 1. Similarly, in defense of the investigation’s reliance on Nassar-affiliated experts, the university argues the “potential for bias or conflict of interest was taken into account” and their conclusions in support of Nassar were justified by “clear rationales.” See attached, Question 23. Putting aside the conflicts with known facts (e.g., Dr. DeStefano’s statements in the report demonstrate *actual* bias), MSU’s arguments simply miss the point. It is incontrovertible that MSU arrived at the wrong conclusion in 2014 and failed to properly conduct its investigation, and MSU would do well to fully acknowledge that mistake.

- It appears at least one MSU gymnastics employee made statements and conducted themselves in a way which, by virtue of their position of authority over team gymnasts, served to prevent one or more gymnasts from reporting sexual misconduct. Whether such a result was intentional or purposeful remains unclear, however.

As these findings indicate, there are clear gaps in current law, regulations, and policies that help enable an environment which, unfortunately, has proven ripe for abuse. While MSU has made many positive changes to its policies addressing these gaps, the Legislature must now act to correct these deficiencies on a broader scale to the greatest extent it can. It must also closely monitor the impact and effectiveness of these changes in the coming years.

The Michigan Senate has already passed a package of bills to begin addressing the inadequacies of current law. These bills are primarily aimed at ensuring that the survivors of Larry Nassar and other similarly situated survivors will have their day in court. However, we believe additional changes are needed not only to more comprehensively protect others from similar abuses, but also to change the very culture which allows for sexual abuse to occur – whether in a medical setting, school, or anywhere else in our communities.

To that end, we have extensively analyzed current law and the information received from MSU, and in consultation with the survivors, other lawmakers, and numerous stakeholders, we have compiled the list below of tailored recommendations for further consideration. Though not all of us necessarily agree with each and every proposal, we all agree that a broad review of potential solutions is necessary to protect our children from predators like Larry Nassar and fix the problems revealed by his horrific crimes.

Prevention and Deterrence

- Ensure intravaginal treatment on minors, outside of certain necessary situations, is not normalized. Additionally, to the extent such treatments are utilized, best practices must be instituted and more guidance must be provided to practitioners. Specifically, we propose the following changes:
 - Require the Board of Osteopathic Medicine and Board of Medicine to issue publicly available guidance materials to medical practitioners on intravaginal medical treatments, including internal pelvic floor treatments;
 - Prohibit, with certain exceptions (e.g., OB/GYN care and emergencies), the performance of a medical treatment involving vaginal or anal penetration on a minor unless: 1) the treatment is within the professional's scope of practice; 2) another healthcare professional is in the room during treatment; and 3) informed written consent on a standardized form is obtained;
 - Require the Michigan Department of Licensing and Regulatory Affairs to create a standardized consent form for vaginal and anal penetrative treatments on minors that includes, in part, statements regarding the use of gloves and the presence of another healthcare professional during these treatments;
 - Require any medical treatment consisting of vaginal or anal penetration to be referenced on the patient's medical record;
 - Require the retention of a patient's medical record referencing a vaginal or anal penetration treatment for 15 years, as opposed to the current seven-year statutory retention period.

- Require the retention of a patient's medical record by a healthcare facility for 15 years if the patient files a complaint to that facility regarding sexual misconduct by an employee;
- Modernize and update the law prohibiting physicians from inducing female patients into sex under the false pretext of medical treatment (MCL 750.90) to ensure that the crime covers all patients from all forms of sexual assault, and require the immediate, permanent revocation of a physician's license if he/she is convicted of this crime. Penalties for the crime should also be increased in light of the existing penalties for criminal sexual conduct to make this statute a more useful tool for prosecutors;
- Create new, tougher penalties for distributors and financiers of child pornography to supplement the changes for possession brought by SBs 878-79;
- Require the Department of Education to maintain a record stating the reason or reasons for, and circumstances surrounding, a separation of service for school employees, to deter predators from moving to another school after being accused of sexual misconduct;
- Require the Department of Education to develop age-appropriate informational material relating to sexual misconduct to distribute to school districts;

Early Intervention

- Create a new crime for using one's position of authority over another to prevent that person from reporting criminal sexual conduct (HB 5537);
- Expand the OK2Say program to specifically cover sexual misconduct (HB 5539);
- Expand the mandatory reporter law to cover coaches (HB 4020) and athletic trainers (HB 5538), as well as physical therapists (HB 5541);
- Provide training for mandatory reporters to more effectively identify abuse;
- Prohibit schools from expelling or suspending students for reporting sexual assault;

Justice for Survivors

- Expand the admissibility of prior sexual crimes in a criminal prosecution (HB 5658);
- Expand the list of people who can submit victim impact statements at sentencing (in addition to requiring the presence of the defendant during victim impact statements, which the House recently supported with its passage of HB 5407);
- Prohibit the public disclosure of a sexual assault survivor's identity when anonymously proceeding in a civil lawsuit;

Governmental Accountability

- Create a Title IX Ombudsman in the Department of Civil Rights to more comprehensively provide means to justice for students on college campuses;
- Increase accountability for public officials by updating the Governor's constitutional authority to remove officials from the State Board of Education and the boards of public universities under MCL 168.293;
- Encourage public universities to improve their policies, training, and services for survivors of sexual assault (HR 164);
- Encourage public universities to submit 5-year Title IX improvement plans;
- Implement the following reforms on public colleges and universities through the Higher Education budget:
 - Prohibit the use of expert witnesses who are employed by the institution and/or have close ties with the accused in the course of Title IX investigations;

- Prohibit the issuance of divergent Title IX reports to the survivor and to the accused;
- Require the Office of the Auditor General to periodically audit the Title IX operations of state universities;
- Require universities to notify law enforcement when investigating a sexual assault complaint against an employee of that institution, if the survivor requests such;
- Require annual reporting by universities to the Legislature and others on the number of Title IX complaints, the time to complete Title IX investigations, etc;
- Withhold funding for any university that fails to comply with sexual assault prevention requirements;
- Encourage universities to conduct a sexual assault presentation for all freshmen and sophomores with contact information for the Title IX office;
- Prevent a university from seeking payment of medical bills for “treatment” provided by physicians convicted of a related crime;
- Require universities to have independent third-parties investigate their Title IX compliance for the upcoming school year;
- Require universities to annually notify the Legislature that the university president and at least one university board member has reviewed all incidents involving any employee sexual misconduct that was reported in a Title IX complaint;
- Require all Title IX Reports regarding an MSU employee to be transmitted to the Board of Trustees;
- Require an outside investigation when multiple Title IX complaints are made against an employee, if the university previously cleared the employee of wrongdoing.

We plan to introduce a bipartisan package of legislation to effectuate these recommendations in the coming days, with committee hearings on the bills, as well as the Senate package, soon after. Given the significant policy changes brought by these bills, a thorough and deliberative committee process with ample opportunities for public input is both justified and expected. Additional ideas are also anticipated.

We appreciate your continued leadership and support on this important issue. It has been our pleasure to serve the people of Michigan in this endeavor, and we look forward to delivering to them a comprehensive set of solutions to protect our children from sexual misconduct.

Sincerely,

Chairman Klint Kesto
Law and Justice Committee
District 39

Chairwoman Kim LaSata
Appropriations Subcommittee on Higher Ed.
District 79

Minority Vice Chair Stephanie Chang
Law and Justice Committee
District 6

Minority Vice Chair Jon Hoadley
Appropriations Subcommittee on Higher Ed.
District 60



SCOTT R. ELDRIDGE
TEL (517) 483-4918
FAX (517) 374-6304
E-MAIL eldridge@millercanfield.com

Miller, Canfield, Paddock and Stone, P.L.C.
One Michigan Avenue, Suite 900
Lansing, Michigan 48933
TEL (517) 487-2070
FAX (517) 374-6304
www.millercanfield.com

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POLAND: Gdynia

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March 29, 2018

Representative Kim LaSata
Chairwoman
Appropriations Subcommittee on Higher Ed.
House of Representatives
State of Michigan
P.O. Box 30014
Lansing, MI 48909-7514

VIA EMAIL

Representative Klint Kesto
Chairman
Law and Justice Committee
House of Representatives
State of Michigan
P.O. Box 30014
Lansing, MI 48909-7514

Re: Michigan State University – March 8, 2018 Information Request

Dear Chairwoman LaSata and Chairman Kesto:

This responds to your March 8, 2018 letter directed to Michigan State University, seeking answers to written questions you have posed related to “the University’s handling of the Larry Nassar case, the University’s Title IX policies and procedures, and other related matters.” We, again, appreciate your willingness to extend the deadline for these answers, which appear below and are based on information currently available to the University.

QUESTIONS/ANSWERS

1. How does MSU explain the fact that there were two different Title IX reports that resulted from the 2014 investigation of Amanda Thomashow’s allegations: one that was provided to Ms. Thomashow, and one that was provided to Larry Nassar?

The differences between the report as issued to Ms. Thomashow and Nassar are limited to the last two paragraphs of the report, which discuss the investigator’s recommendations regarding steps that the department should consider implementing even though no violation was found. Other than that, the versions of the 21-page report sent to each of Ms. Thomashow and Nassar are word-for-word identical. The two

additional paragraphs of recommendations were included in the report distributed to Nassar, his Dean, the Office of General Counsel, and Academic Human Resources. The Office of Inclusion and Intercultural Initiatives (“I3”) informed Ms. Thomashow that, despite the finding of no-violation, I3 had made recommendations for policy and practice changes based on the information learned through the investigation, without discussing the specifics thereof. This practice was consistent with the University’s Title IX obligation to inform claimants of the outcome of the investigation.

2. In 2014, did MSU have a rule, procedure, or any other type of policy in place to prohibit the issuance of different final investigative reports to the complainant and the respondent at the close of an investigation? Is such a policy in place today?

Under present practice, the Office of Institutional Equity (“OIE”) limits investigation reports to the questions of whether or not a violation occurred, the rationale for the decision, and the specific steps recommended to address any violations found to exist. This is the result of a clearer definition of how the OIE investigative report fits into the University’s overall Title IX compliance effort. If an investigator has recommendations that go beyond the confines of the specific matter or has recommendations for improvements to policies or practices in matters where no violation was found, those are addressed in a separate communication to appropriate persons for their consideration and review. As a result, under current practice, the investigative report issued to the claimant and the respondent is identical.

At the time the report regarding Ms. Thomashow’s allegations, I3 did not have any policy specific to whether investigative reports shared with claimants and respondents had to be identical. Title IX at that time required only that a claimant be advised of the “outcome” of the investigation. Generally, in matters involving students alleging violations by other students, both the claimant and the respondent were given access to the report sent by I3 to the Student Conduct Board. In matters involving allegations by a claimant who was neither a student nor employee of the University, such as was the case with Ms. Thomashow, the degree to which an investigation report was shared with the claimant varied with the facts and circumstances, such as concerns regarding employee privacy or the terms of any applicable collective bargaining agreement. In some cases, the claimant was informed only as to whether or not a violation of the policy was found to exist, in other cases more information was shared.

3. The 2014 final report for Amanda Thomashow includes an interview with Larry Nassar in which he states that there was “no preset protocol for whether to have another person in the room during such an exam.” Was that accurate then? Is it accurate now? If yes, then why does MSU not have such a protocol in place?

Nassar’s statement was accurate at the time. Since that time, the University HealthTeam has adopted the Policy on Patient Privacy, Chaperones and Informed Consent for Examination, Treatments or Procedures, (“Policy on Patient Privacy”),

<https://msu.edu/ourcommitment/patient-safety/PatientPrivacyDuringProcedures-Oct-2017.pdf>. The policy, among other things, provides for a patient's right to have a chaperone present during sensitive examinations and treatments if the patient so desires, and for explanation of that right before the examination or treatment commences.

4. At the end of the version of the 2014 Amanda Thomashow Title IX report that was provided to Nassar, Kristine Moore suggested that reporting protocols relating to the reporting of misconduct should be reconsidered (e.g., should a complaint to the front desk receptionist trigger a reporting protocol?). Have reporting protocols changed accordingly since that incident? If so, how? Would a patient complaining to a front desk receptionist at a clinic today trigger any reporting protocols?

Yes. Since 2014, the Universities policies relating to Title IX compliance and reporting have been revised. MSU's Relationship Violence and Sexual Misconduct Policy outlines reporting protocols for incidents of relationship violence and sexual misconduct (pages 25-30). It requires that all University employees, other than those identified as confidential sources and certain medical professionals providing patient care, are expected to promptly report relationship violence, stalking, and sexual misconduct that they observe or learn about in their professional capacity and that involve a member of the University community (faculty, staff, or student) or which occur at a University-sponsored event or on University property. While these expectations existed in 2014, the current policy provides greater emphasis and clarity. Furthermore, MSU mandates that employees report sexual misconduct and relationship violence to both the MSU Police Department and OIE. OIE reviews and responds to reported incidents of harassment and discrimination, including relationship violence and sexual misconduct. MSU through its policy and resource materials informs individuals of their right to participate in both a criminal and University investigation and provides options for reporting to a confidential source, such as a counselor. As a result, a front desk receptionist who received a communication which was understood to be a report of sexual misconduct would have a duty to report the matter to OIE and MSUPD. MSU strengthened mandatory reporting by including consequences for employees who fail to adhere to their reporting obligations in the August 2017 revision of the Relationship Violence and Sexual Misconduct Policy.

The Relationship Violence and Sexual Misconduct Policy can be found at:

https://www.hr.msu.edu/policies-procedures/university-wide/RVSM_policy.html

Additional information and resources to support reporting can be found at the following links:

<http://titleix.msu.edu/make-a-report/index.html>. <http://titleix.msu.edu/policy-info/mandatory-reporting.html> <http://titleix.msu.edu/files/documents/mandatory-reporting-guide.pdf>

MSU also maintains mandatory reporting requirements for child abuse and child pornography in the policy titled University Reporting Protocols: Child Abuse, Sexual Assault, and Child Pornography. These reporting protocols apply to all employees and volunteers who perform services for the University. The policy requires that all employees and volunteers report suspected child abuse or neglect directly to law enforcement; individuals who are mandated reporters under state law must also report directly to Child Protective Services. Employees or volunteers who become aware of suspected child pornography on MSU IT Resource must contact the MSU Police Department immediately. Employees or volunteers who knowingly fail to report suspected child abuse, child neglect, sexual assault, or child pornography may be subject to disciplinary action, up to and including dismissal. The full text of the protocols may be found at:

https://www.hr.msu.edu/policies-procedures/university-wide/reporting_protocols.html

In addition to the foregoing, both the MSU Police Department and MSU's OIE connect individuals who report with advocacy and support resources available on campus and in the community, including through confidential campus and community crisis hotlines and support services. An overview of these resources can be found at: <http://titleix.msu.edu/find-resources/index.html>.

- Student Claimant Resource Guide

<http://titleix.msu.edu/find-resources/Student%20Claimant%20Resource%20Guide%20011118.pdf>

- Employee Claimant Resource Guide

<http://titleix.msu.edu/find-resources/Employee%20Claimant%20Resource%20Guide%20011118.pdf>

- Claimant Resource Guide for Unaffiliated Parties

<http://titleix.msu.edu/files/documents/unaffiliated-claimant-resources-guide-5-31-2017.pdf>

- MSU Police Department Options & Resources for Survivors

https://www.hr.msu.edu/policies-procedures/university-wide/documents/AppC-MSU_PD_infoForms.pdf

The University has adopted information sharing protocols to enhance the flow of information between the MSU employees who share responsibility for compliance.

Finally, general information about the University's Title IX policies and procedures can be found at <http://titleix.msu.edu/policy-info/index.html>.

5. What has MSU done to address the inadequacies identified in the version of the 2014 report that was provided to Larry Nassar but not the complainant, Amanda Thomashow?

The issues raised by Ms. Moore are most immediately addressed in the University HealthTeam Policy on Patient Privacy and in the enhancements to MSU reporting policies discussed in response to questions 3 and 4.

6. Aside from the Amanda Thomashow Title IX report in 2014, are there any other Title IX cases that Michigan State University ("MSU") is aware of in which a victim/complainant was given a different version of the final report than the respondent?

As discussed in response to question 2, under the practice in effect prior to the formation of OIE, the information shared with claimants, other than in cases concerning student on student misconduct, may have been different than that shared with a respondent or the respondent's supervisors, particularly if one party was not a student, employee or faculty member of MSU. However, under the practices in place since mid-2015, this has not occurred.

7. Please provide a list of all MSU employees known to have seen the 2014 Thomashow Title IX report before it was made public.

Prior to its being sent to Ms. Thomashow, the report was sent to William Strampel, then Dean of the College of Osteopathic Medicine, Terry Curry, Associate Provost and Associate Vice President for Academic Human Resources, Theresa Kelly, Office of General Counsel, and possibly to Paulette Granberry-Russell, who was the Director of I3 and Ms. Moore's supervisor.

8. Was there any follow-up with Amanda Thomashaw [sic] after the 2014 Title IX investigation was completed? If so, what did this entail? If not, why not?

Upon completion of the investigation, Ms. Moore met with Ms. Thomashow to inform her that the report would conclude that there had not been a violation of the sexual harassment policy and explain the rationale for the decision. When the investigation report was later sent to Ms. Thomashow, she was invited to provide feedback and was

informed that I3 had recommended changes in the policy as a result of the facts developed in the investigation.

In 2016, after receiving a complaint from Rachael Denhollander regarding Nassar, OIE contacted Ms. Thomashow to discuss her potential participation in that investigation or a reopening of the investigation of her complaint. Ms. Thomashow did not respond to those contacts until after filing her individual lawsuit against MSU. Once a suit is filed, resolution of an individual's grievance is through the judicial process invoked by the claimant rather than through MSU's internal grievance procedures.

9. How does MSU account for very different conclusions between the 2014 Title IX investigation (Thomashow) and the 2017 Title IX investigation (Denhollander) given that they involved the same respondent (Nassar) and similar allegations?

MSU thoroughly investigated each of Ms. Thomsahow's and Ms. Denhollander's complaints. The investigation of Ms. Denhollander's complaint proceeded with knowledge of Ms. Thomashow's prior complaint as well as other claimants who came forward while the Denhollander investigation was pending. The two investigations revealed facts that were materially different as between Ms. Thomashow and Ms. Denhollander, and these differences account for the fact that no violation was found as to Ms. Thomashow's complaint but one was as to Ms. Denhollander's.

Ms. Denhollander reported that Nassar engaged in intra-vaginal massage (penetration) and anal penetration during the course of the purported medical treatments for her back, and Nassar at times appeared sexually aroused during the treatments. She further reported that Nassar had massaged her breast, even though she was not consulting him for any upper body problems. Ms. Denhollander's mother, who was present in the room during the treatments, also reported at least one instance in which Nassar appeared to her to have been sexually aroused during the treatment. Nassar denied that he had engaged in the behavior as described by Ms. Denhollander. At no point did Nassar attempt to justify the behavior described by Ms. Denhollander as medically appropriate treatment. Having found there being no medical explanation for the conduct, a violation was found.

Ms. Thomashow consulted with Nassar to address gait issues and during the examination indicated she experienced shoulder pain with certain movement. Ms. Thomashow reported external contact/massage in the breast and genital area. While she noted that she feared the possibility of vaginal penetration, she stated that such penetration did not occur. She did not allege any anal penetration. Nassar did not dispute the specifics of the physical conduct described by Ms. Thomashow, but contended that the conduct was a legitimate modality of osteopathic treatment. He explained that in treating shoulder issues it is common to have to palpate the ribs, and in doing so, contact with the breast is unavoidable. He stated that the contact near the vaginal area was part of a recognized procedure called an STL Release. Nassar also

provided conference presentations describing the STL Release procedure much as it had been described by Ms. Thomashow. MSU also consulted other osteopathic practitioners who stated that the conduct as described was consistent with recognized modalities of osteopathic treatment. Based on the statements of Nassar and the three other medical professionals interviewed, the investigation concluded that the physical conduct in this instance was a legitimate modality of osteopathic treatment, and therefore not a violation of the sexual harassment policy.

10. What is the current status of the U.S. Department of Education, Office for Civil Rights' (OCR) monitoring of the MSU Resolution Agreement signed by MSU in 2015?

MSU has a monitoring report due to be filed with OCR on or about June 30, 2018. In addition, in January 2018, MSU sought technical assistance from OCR regarding procedures for responding to additional complaints concerning Nassar. On February 22, 2018, OCR informed MSU that it would provide the technical assistance, but requested additional information before doing so. In addition, OCR stated it was conducting a directed investigation to determine whether the extensive information that came to light in conjunction with Nassar's trial and news reporting on the matter required further action. MSU provided responses to OCR on March 1 and March 9, the dates set by OCR for response.

11. Has the wait time for a sexual assault survivor/victim to access a counselor gone down from 2-4 weeks (referenced in the Sept. 1, 2015 OCR letter)? What is the average current wait time? What is the written policy regarding referral to counseling for Title IX complainants/sexual assault victims on campus?

Sexual assault survivors have two primary options for seeking mental health treatment on campus, the Sexual Assault Program and the Counseling Center. All individuals seeking a first appointment through the Counseling Center of MSU Counseling & Psychiatry Services ("CAPS") are seen on a same-day, walk-in basis for their initial appointment. There may be a wait time for follow-up services depending on acuity and the services needed. The database used by CAPS does not allow for isolating the wait time for specific groups of students. All sexual assault survivors are offered a referral to the MSU Sexual Assault Program for the second and subsequent appointments.

For the MSU Sexual Assault Program ("SAP"), all of the individuals who seek services directly from SAP complete an intake with the program. These individuals as well as those who are referred to the program (such as through the Counseling Center) are put on a waitlist and assigned services based on acuity. Survivors can begin advocacy services or groups immediately. There is no waitlist for advocacy services. The MSU Sexual Assault Program also has a crisis counselor who maintains the waitlist, completes intakes, and checks in with survivors while they wait. During the current, spring 2018 semester, the average wait time to see a counselor through the MSU Sexual Assault Program has been five days, and 72% of new clients have been

assigned to a therapist in seven days or less. Wait times can be affected by acuity of need, by a patient's expressed preference for a particular counselor or other factors. The wait time has gone down since 2015 because the program has added additional therapy staff. In the spring 2015 semester, the average wait time was 25 days. In the fall 2015 semester, the average wait time was reduced to 14.5 days. At the beginning of 2015, the MSU Sexual Assault Program employed two therapists, but increased its staff to four therapists by the end of 2015. Currently, the MSU Sexual Assault Program has five therapists and a crisis counselor. The program has posted an opening for another crisis counselor position and recently received confirmation of grant funding for two additional therapists and two additional advocates, which are currently posted.

The policy for referrals is outlined in MSU's written Relationship Violence & Sexual Misconduct (RVSM) Policy.

12. What steps has MSU taken since the Sept. 1, 2015 OCR letter to reduce the length of time to get to final resolution in Title IX cases?

MSU has significantly increased staffing resources in the Office of Institutional Equity to support a prompt and equitable investigation process. When OIE was initially created, the office had a staff of three full-time investigators. The number of full-time investigators increased to seven during the 2015-2016 academic year and nine during the 2016-2017 academic year. With Interim President Engler's recent authorization of additional staffing resources for OIE, this will increase to a total of 10 full-time investigators. Additionally, MSU has four staff positions and Interim President Engler recently authorized the addition of new staff positions to support timely response to reported incidents. MSU has implemented internal protocols, including a case management system to increase the efficiency of administrative elements of the OIE process. MSU has taken steps to streamline the sanction and appeal processes outlined in the Relationship Violence and Sexual Misconduct Policy in order to improve efficiency while preserving fairness. MSU is currently searching for a second staff member to support the student conduct process to further improve efficiency. These steps have reduced the average time to complete an investigation from 153 days during the 2014-15 academic year to 80 days in the 2016-17 academic year. The time to complete the student conduct process has fallen from 88 days to 48 days in the same period.

13. Do students have the option of filing a sexual harassment complaint with the Michigan Department of Civil Rights, in addition to Office of Institutional Equity ("OIE")? If so, does MSU make students aware of that option?

To the extent the Department asserts jurisdiction of student claims, students may file a complaint with the Michigan Department of Civil Rights. MSU's RVSM policy

specifically advises students of their right to file a complaint regarding sexual misconduct with the MSUPD, local law enforcement authorities and the U.S. Department of Education Office of Civil Rights in addition to an internal grievance with OIE. Employees are specifically advised of their option to pursue a claim through the Michigan Department of Civil Rights. RVSM Policy at pp. 21-23 and 33.

14. When a report finding that sexual misconduct occurred is submitted from the OIE to MSU's Title IX Coordinator, what are the Title IX Coordinator's next steps? How are those next steps determined?

Reports prepared by OIE investigators are reviewed by the Director of OIE, but are not routinely sent to the Title IX Coordinator. The Director of OIE reviews investigative reports for thoroughness, accuracy, and consistency in order to identify patterns or issues that suggest the need for a broader or more systemic response. After review by the Director of OIE, reports finding a violation occurred are submitted to the appropriate University personnel to determine appropriate sanctions. Whether the respondent is a student, faculty member, or staff employee determines which body or person receives the report. In addition, the Director of OIE reports to the Title IX Coordinator regarding issues identified as meriting consideration for a broader response. The Title IX Coordinator is responsible for considering the information provided by the OIE Director, along with information from various other sources to evaluate the effectiveness of overall compliance efforts and to develop additional policies, training, protocols, or actions to further enhance compliance efforts.

15. Does the OIE currently have any policies, guidelines, or protocols in place regarding the interviewing of closely associated colleagues of a respondent as medical experts in investigations into whether a respondent's medical conduct was appropriate?

While not specific to investigations involving medical experts, investigators do have general training in how to recognize and account for possible witness bias when making determinations. OIE has also issued written direction to investigators on the use of outside experts, which is not limited to the potential use of medical experts.

16. Were complainants in sexual misconduct investigations by OIE in 2014-16 provided the right to appeal a final determination? How about today? If so, are complainants notified of that right to appeal? How?

OIE became operational as an investigative group around July 2015. Beginning in September 2015, student claimants and respondents were permitted to challenge the OIE decision, which was akin to an appeal, and resulted in a determination regarding the OIE finding. In August 2016, MSU revised its policy to include student sanction and appeal procedures, which outlined a new appeal process for both claimants and respondents that were students. Appeal procedures were implemented for faculty and academic staff in September 2016 and included equal appeal rights for both the

claimant and respondent. In May 2017, the faculty and academic staff appeal procedures were expanded to include equal appeal rights for all employee claimants and respondents. The investigative findings are sent to the claimant and respondent simultaneously with a cover letter that explains the right to appeal the findings along with instructions for appealing. For employees, appeals to the Equity Review Officer may be made within ten days. For students, when no violation is found, an appeal may be filed with the Equity Review Officer within ten days. For students, when a violation is found, the report is sent to the Office of Student Conduct and Conflict Resolution, as discussed in response to question 14. Appeal rights in such cases are triggered once the sanctioning body/official has rendered a final decision. Appeal rights are generally described in the notification of the sanctioning body/official's decision. The appeals process for student conduct complaints are also described in the RVSM Policy at page 39-40.

17. Were there any appeals of the Title IX reports/conclusions regarding Nassar?

No.

18. Did any MSU coach or other athletics department employee ever report complaints regarding Nassar to OIE?

Prior to MSU's termination of Nassar's employment in September 2016, OIE did not receive any reports from coaches or athletics department staff regarding Nassar.

19. When was the Interim Measures and Training Specialist position created at OIE? Is this a permanent position?

The Interim Measures and Training Specialist position was created and filled during 2016. It is a permanent position within OIE.

20. How frequently are interim measures used after a Title IX complaint/sexual assault complaint is made? What are examples of interim measures that have been used in the past 5 years?

Interim measures are available to all claimants and respondents both through OIE and through confidential resources. They are frequently used and most often implemented with input from the claimant. Some measures, such as a decision to suspend an employee pending investigation, may be made without claimant input by the University. Until the implementation of OIE's case management system in 2016, OIE and its predecessor I3 did not track interim measure statistics separately. In addition to requesting interim measures directly through OIE, MSU's Policy allows for such requests to be made through confidential resources on campus including the Sexual Assault Program and MSU Safe Place. Because these are confidential resources, information about interim measures would not be reported to

OIE or tracked, unless OIE assistance was required in the implementation of an interim measure.

The scope of interim measures necessarily varies with the specific circumstances of each matter and the needs of the individuals involved. Measures that are frequently employed include: no-contact orders or other activity restrictions; housing assignment or work location adjustments; course or work schedule adjustments; academic adjustments such as extensions of time to complete course work or retaking of exams; and suspension pending investigation.

21. After the 2014 investigation regarding the Thomashaw [sic] complaint, what steps were taken to monitor recommendations in the report such as (1) having someone in the exam room and (2) using gloves (i.e. not using personal/ungloved touch)?

Dean Strampel informed I3 that the College of Osteopathic Medicine (“COM”) agreed with the recommendations made in the report and was implementing the same. Thereafter, it was the responsibility of COM Dean Strampel to implement and monitor compliance with the agreed upon protocols.

22. Have communication and informed consent protocols changed since the 2014 Amanda Thomashow Title IX report? Are there currently any requirements that doctors explain sensitive medical procedures before treatment? Have informed consent protocols or procedures changed?

Yes. See the University HealthTeam Policy on Patient Privacy, described in response to question 3, above.

23. Is it typical that the Title IX office would interview doctors who have a “very close relationship” with the respondent (Larry Nassar) and were all educated and/or employed at the same university to see if the medical practice is valid? Are there any conflict of interest considerations that the Title IX office considers before deciding who to interview? Is there a written policy regarding this?

The issue of whether a particular medical practice is a valid modality of treatment has rarely arisen in MSU’s Title IX investigations. As a result there are insufficient data points to say that any particular practice is or is not “typical.” In the 2014 Nassar investigation, the medical professional referred to as having a “very close relationship” with Nassar had been identified by Nassar as a witness with whom to speak and the relationship was noted in the report so it could be taken into account when evaluating the evidence. The investigator independently sought recommendations from then-Dean Strampel as to other doctors who could provide an informed and impartial expert analysis of the conduct described by Ms. Thomashow and Nassar. Strampel identified two additional personnel who were each interviewed. As with any investigation, the potential for bias or conflict of interest was taken into account. All of the medical

personnel, despite their respective level of professional association with Nassar, stated that the conduct was a recognized treatment modality and provided clear rationales for their assessments.

24. In a July 30, 2014 email from Dr. William Strampel to Larry Nassar, Dr. Strampel provides new protocols for Nassar to follow after the 2014 Title IX investigation against him. The third protocol states that “[n]ew people in our practice will be oriented to be sure they understand these requirements” (i.e., that there should be another person in the room for sensitive procedures, there should be little to no skin-to-skin contact unless medically necessary, and if skin-to-skin is necessary, the patient is adequately informed with another person in the room). Has this protocol been implemented and is that currently departmental policy for new practitioners?

These protocols are in place as part of the University HealthTeam Policy on Patient Privacy.

25. Does MSU currently have any policies, guidelines, or protocols in place to require that any disciplinary or corrective protocols imposed on an employee investigated for misconduct be communicated to anyone other than the affected employee? Were any such policies or guidelines in place in 2014? If not, does MSU plan to implement such policies, guidelines, or protocols moving?

MSU has implemented a set of information sharing protocols which address these concerns, which can be found at <https://oie.msu.edu/policies/index.html>. These protocols were not in place as of 2014. The practice at that time was that the administrative unit manager would be made aware of any corrective protocols/restrictions or recommendations resulting from an investigation. The administrator with authority over the unit could also consult with human resources if the administrator had questions about the extent to which information could be shared or how to monitor compliance.

26. It appears that MSU’s Sports Medicine has or had a medical record retention policy of ten years, after which medical records are destroyed. Does MSU’s Sports Medicine still have this policy in place today? If so, is MSU considering lengthening the record retention policy in light of it being shown inadequate here?

The requirement that records be retained for a minimum of ten years exceeds the current statutory requirement of seven years. MCL 333.16213. Nonetheless, the University HealthTeam is in the midst of conducting a global policy review and there is potential that the minimum retention time will be addressed.

27. Did or does MSU have a policy giving patients the right to have someone else present in the room? Is there a specific policy regarding the presence of another person in the room when the patient is a minor?

Yes. See the University HealthTeam Policy on Patient Privacy, referred to in response to question 3, above.

28. Did anyone at MSU investigate the medical professionals who validated Nassar's claims in the 2014 Title IX investigation with regards to whether they had ever had any documented ethics or malpractice complaints filed against them, either with the State Board or MSU? Did any of them also consult for Twistars or USA Gymnastics?

It is not MSU's practice to do background investigations on witnesses to a Title IX investigation. We believe Dr. Lemmen volunteered with Twistars and USA Gymnastics. To MSU's knowledge, none of the medical professionals consulted in the 2014 investigation had a record of any ethics violation or malpractice findings with either the State Board or MSU at the time of that investigation.

29. Why was Nassar allowed to continue practicing medicine at MSU after the first Title IX complaint was made against him? Why did it take until August 2016 for him to be reassigned when the first complaint had been filed two years prior in 2014? When a Title IX complaint is filed against a MSU employee, is there any consideration made about whether that person should be at least temporarily removed or have less contact with potential victims as an interim measure? Is the consideration of these possibilities different for student respondents vs. employee respondents?

On or about April 21, 2014, Ms. Thomashow met with Dr. Jeffrey Kovan and expressed concerns that the medical treatment she received from Nassar had been inappropriate and may have been a form of sexual misconduct. Dr. Kovan immediately reported the conversation to I3, the office then in charge of investigating sexual misconduct allegations. I3 reported the matter to MSUPD in May 2014 after obtaining more detailed information from Ms. Thomashow. Nassar was reassigned from patient care responsibilities pending the outcome of the investigation. As noted above, the I3 investigation concluded that no violation of MSU's then-existing sexual harassment policy had occurred. MSUPD turned over the results of its investigation to the Ingham County prosecuting attorney's office. The prosecutor's office did not file any criminal charges following its review. Because the I3 investigation found no violation of the University's sexual harassment policy, and no criminal charges had been filed nor were anticipated, there was no cause to remove Nassar from employment or the medical practice, and he was allowed to return to active practice. Thereafter, Ms. Thomashow did not have additional contact with Nassar. Upon receiving Rachael Denhollander's complaint in late August 2016, MSUPD forwarded the information to OIE. Nassar was again reassigned from patient care duties pending the outcome of the investigation. Nassar was terminated in September 2016 rather than returned to active practice as the investigation indicated that Nassar had failed to consistently abide by the practices communicated to him in 2014, and had failed to disclose or provided misleading information about the fact that his service

with U.S.A. Gymnastics had been terminated involuntarily as the result of an investigation of sexual misconduct. MSU did not learn of the involuntary nature of the termination or the reasons for it until after Nassar had been suspended on August 30, 2016. Between the two investigations, there had been no additional complaints regarding Nassar's behavior nor had the University otherwise become aware of information that warranted termination.

As to the more general question, the potential need for interim measures, some of which may involve temporary activity or access restrictions on the respondent, is considered when a complaint is filed and while pending. Those measures can take several forms. They can include a no contact order requiring the respondent to avoid contact with the claimant, restricting a respondent's access to campus or portions thereof, and suspension of employees or students. Whether the respondent is a student rather than an employee is one of several factors taken into account in crafting the interim measures most appropriate to the particular circumstances of an individual case.

30. Have there been any changes since either the 2014 (Thomashaw [sic]) or 2017 (Denhollander) reports related to requiring another adult or medical professional to be in the room for potentially intrusive/sensitive procedures conducted by MSU doctors?

Yes. See the University HealthTeam Policy on Patient Privacy, referred to in response to question 3, above.

31. Were there any Title IX complaints against Nassar, other than the 2014 (Thomashaw [sic]) and 2017 (Denhollander) complaints, that did not result in a "full" investigation? How many? And what were the reasons for not completing a full investigation?

Between April 2014 and August 2016, the only complaint concerning Nassar was that received from Ms. Thomashaw. Ms. Thomashaw's complaint was the subject of a full investigation by I3. Since Ms. Denhollander's complaint in 2016, 91 complaints have been received to date. All claimants were offered support services and interim measures when appropriate and feasible. OIE then explained the investigation process, and informed the claimant that Nassar had been terminated by the University. Claimants were given the option of invoking a full formal investigation or providing a witness statement that shared as much information as the claimant was comfortable divulging. Claimants were informed that the witness statements would be shared with the Title IX Coordinator and reviewed to inform decisions concerning relevant policies, procedures, and training in order to propose improvements as appropriate. Formal investigations were conducted whenever requested by the claimant and were not conducted when the claimant stated a desire to proceed solely by way of witness statement or to not participate. All information received was reviewed by the Title IX Coordinator as part of MSU's ongoing efforts to provide an inclusive and safe environment. Of the complaints filed in 2016-17, 5 claimants elected to seek a full, formal investigation; the

remainder did not. Of the complaints filed to date in 2017-18, none of the claimants has requested a formal investigation.

32. Has MSU made any policy changes since the Nassar case to improve such communications with students or athletes regarding investigations of misconduct against University employees or officials?

The University is not certain as to the scope of the question and which communications you are particularly interested in. As noted in response to other questions, all students are required to participate in a two-hour workshop when first attending MSU, and an additional online training program annually thereafter. The training includes information regarding policies and procedures for reporting perceived sexual misconduct and the process by which the University resolves the allegations. In addition, student-athletes are required to participate in annual training regarding sexual misconduct issues. Employees are required to complete training within thirty days of hire and biennially thereafter.

Student Training:

1. Required Online Training

All undergraduate and graduate students are required to complete an annual online training program. First-year students will complete a full-length course and returning students will complete a different, shorter course each year, which explores a related topic at a deeper level. Students will not be able to access important academic information in the student information system, including grades, until they complete this training.

Online training programs for students include information on the following topics:

- Providing information to identify sex discrimination and sexual harassment, including relationship violence and sexual misconduct.
- Raising awareness of the impact of these issues on the campus community and encouraging community members to engage in efforts to end these types of violence.
- Advising members of the MSU community about their rights and reporting options under the *Relationship Violence and Sexual Misconduct Policy*.
- Communicating behavioral expectations for all members of the MSU community as outlined in the policy.
- Connecting community members with support and resources.

2. Required Workshop

The Sexual Assault and Relationship Violence Prevention Program (“SARV”) is a required workshop for all first-year and transfer students. SARV offers a number of peer-facilitated workshops throughout the year. The SARV workshop is a two-hour, peer-facilitated workshop that offers a forum for students to engage in conversation and be educated about sexual assault and relationship violence on campus, and empowers these students to become active members in keeping the MSU community safe. In fall 2017, SARV launched a supplemental workshop for upper class students providing instruction on bystander intervention skills.

SARV also offers an LGBTQ specialized workshop. During this workshop, the format is slightly changed so all scenarios are gender neutral. There is no gender breakout for the second half of the workshop, as there are for other SARV programs. Additional information is provided regarding unique challenges LGBTQ survivors of sexual assault and relationship violence may face, as well as resources to address needs specific to LGBTQ individuals.

SARV provides an International Student SARV Workshop designed to accommodate a wide range of cultural backgrounds, social norms, and education regarding issues of sexual assault and relationship violence. This workshop provides more definitions of terms, education regarding American university culture, and additional information about legal issues and resources for international students.

SARV provides specialized workshops for Greek-affiliated students, called Greeks Take the Lead. The focus of this program, which was developed collaboratively with the Greek community, is to raise awareness about issues of relationship violence and sexual misconduct, recognize ways to intervene, understand the intersection of alcohol and sexual violence, discuss positive tools for supporting victims, and tips for making their environment safer.

The SARV program has also worked with campus partners such as MSU Police and the Title IX Coordinator on three grant-funded programs awarded through Governor Snyder’s Campus Sexual Assault Grant Program. These grants have funded development of the following programs:

- Bystander Network training program for area bars and cab companies
- Bystander Intervention workshop for upper class students
- Multi-tiered prevention education program for Greek-affiliated students

Training for Student-Athletes, Athletics Coaches, and Staff:

MSU provides training annually to Athletics Coaches and Staff on multiple dates addressing the following topics:

- MSU's policies and grievance procedures;
- The role and duties of the OIE office and the Title IX Coordinator;
- How to recognize and appropriately address incidents and complaints under Title IX, including where and with whom to report such incidents; and
- How to identify sex discrimination, sexual and gender-based harassment, assault and violence.

Student athletes on every varsity team receive two presentations per year addressing issues related to sexual misconduct: the first, "Huddle Up", is presented by the Institute for Sport and Social Justice and the second program is provided by OIE. Together, these programs, and the University's other required training programs for students, address the following topics: an overview of Title IX and OIE, mandatory reporting at MSU, the University's RVSM Policy, applicable laws, healthy relationships, consent, sexual violence prevalence and attitudes, harassment, stalking, sex discrimination, reporting, intersectionality of alcohol/drugs and sexual violence, and bystander intervention strategies.

MSU Awareness and Outreach Programs:

As part of its ongoing commitment to prevent, respond to and educate about sexual assault, partners across Michigan State participate in the "It's On Us" campaign. This includes posters, promotional giveaways, social media messaging, and events designed to raise awareness. Events for the 2016-2017 academic year included a nationally recognized speaker, a movie screening and panel discussion, campus town hall meeting, and the inaugural Student Leadership Institute: Engaging and Empowering Student Leaders to Prevent Sexual Violence.

MSU also utilizes multi-disciplinary committees, such as the Sexual Violence Advisory Committee and Violence Free Communities Committee to gather input from the community regarding pressing campus climate concerns and seek input and suggestions to improve the campus culture at MSU.

33. How many Title IX complaints were made to MSU from 2000 to 2017?

The below statistics reflect complaints received by I3 or OIE in the years listed, regardless of whether the complaint was ultimately determined to involve a matter that arose under Title IX or was in the University's jurisdiction. Prior to the 2015-16 academic year, MSU did not have an electronic data base to track Title IX complaints. The University is working on back filling the data base with cases from earlier years and has largely completed the process for years back to 2011-12. However, given the lack of an organized system at that time, the numbers for years prior to 2015-16 may be subject to change as additional information is found.

2011-2012: 55

2012-2013: 89

2013-2014: 108

2014-2015: 201

2015-2016: 461

2016-2017: 718

2017-2018 YTD (3/25/18): 740

34. What are the requirements to become a Title IX investigator at MSU? How are Title IX investigators trained at MSU? What type of training do the investigators receive regarding their analysis, the preponderance standard, etc.? How often does this training happen? How often are the investigators evaluated?

Below is the Job Description for the Title IX investigator position which lists required and preferred qualifications, as well as a summary of the on-going training activities provided to investigators.

Title IX Investigator Position Description:

Position Summary

The Institutional Equity Investigator position is located within the Office of Institutional Equity and is responsible for numerous aspects of university compliance with civil rights laws and policies. Responsibilities include: investigate claims of discrimination and harassment involving students, employees, and third parties in compliance with university institutional equity policies and civil rights laws. This includes, but is not limited to, interviewing parties/witnesses, coordinating interim measures, identifying, obtaining and analyzing relevant evidence, conducting complex analysis under relevant legal standards, producing high quality investigation reports, and representing the office in student conduct hearings. Act as an impartial fact finder in the investigation process. Handle claims with sensitivity and neutrality, ensuring office and university process is followed throughout. Provide input regarding policies and procedures at the university related to institutional equity. Work collaboratively with colleagues, committees, campus partners and experts to ensure civil rights compliance. Provide training and guidance related to institutional equity matters; ensure training meets all legal requirements. Identify and address systemic equity issues; assist director of office to respond to findings. Work to infuse the value of inclusion - a core value of the university - into the

university community and support inclusive efforts across campus. Work to build a culture of active respect and concern for all members of the Spartan community. Perform other duties as assigned.

Unit Specific Education/Experience/Skills

Knowledge equivalent to that which normally would be acquired by a four-year college degree; three to five years of related and progressively more responsible work experience in complaint investigation, mediation, and conflict resolution in a university setting or equivalently complex organization; knowledge of civil rights laws, affirmative action legislation and programming, and familiarity with administrative law hearing process; understanding of related US cultural and historical social movements; experience in multicultural recruitment and retention strategies; comprehensive record-keeping and research skills; familiarity with legal and business software applications; and/or strong presentation and public speaking skills; or an equivalent combination of education and experience.

Desired Qualifications

JD or advanced degree in relevant field; experience in higher education; experience in a compliance related role; experience in training and professional development program delivery; ability to build consensus, collaborate and work with broad numbers of, and diverse, campus and off campus partners; adherence to deadlines and excellent written and verbal communication skills; prior experience with successfully, independently and efficiently managing an active caseload; excellent work ethic and high level of motivation and productivity; strong analytical and critical thinking skill and ability to analyze, summarize and present findings and recommendation.

Investigator Training:

Training is provided to the Title IX Investigators on how to conduct adequate, reliable, and impartial Title IX investigations, including an emphasis on the claimant's right to pursue the University's process and the law enforcement process at the same time, as well as a reminder of the policy prohibiting retaliation and intimidation. Investigators receive annual training regarding their analysis, application of the preponderance standard, investigation best practices, report writing, and trauma informed interview practices. The training also addresses revisions to MSU's policy and how to respond to additional incidents of alleged sexual harassment and retaliatory harassment that the University receives notice of during the investigation. Investigators also engage in external professional development annually by attending conferences and training programs offered by professional organizations recognized for expertise in this area.

MSU also engages in the practice of conducting case reviews, which follow an “after-action review” model. These case reviews allow MSU’s Title IX investigation team to assess the implementation of our policy and procedures and identify any adjustments to policy, procedures, or protocols that need to be addressed. Investigation reports are peer reviewed in many cases and are reviewed and approved by the OIE Director before they are issued.

Investigators receive an annual performance review by their director.

35. How many total Title IX staff were there at MSU for each year starting in 2000 and ending in 2017?

The below statistics reflect employment positions within OIE and the Title IX Coordinator’s office for the years starting in 2015-16. As noted in the Husch Blackwell report, other positions on campus contribute to Title IX compliance in various ways, even if not designated as the full scope of their duties. Thus, accurate counting of “Title IX staff” is difficult. Prior to 2015-16 responsibility for investigations of Title IX complaints was shared between I3 or its predecessor and personnel who were not dedicated full time to Title IX issue investigations. Thus, the numbers for the period prior to 2015-16 are not directly comparable to later years.

- 1/2000-6/2004: 1 investigator
- 6/2004-early 2006: 2 investigators
- 2006-7/2011: 1 investigator
- 8/2011-7/2014: 2 investigators
- 8/2014-10/2014: 3 investigators
- 11/2014: 2 investigators
- 12/2014: 2 employee investigators plus one independent contractor
- 2015-2016:
 - Administrators: 2
 - Investigators: 7
 - Staff: 2
- 2016-2017:
 - Administrators: 2
 - Investigators: 9
 - Staff: 4
- 2017-2018:
 - Administrators: 2
 - Investigators: 9 (1 of 9 positions is being backfilled now due to staffing departure, 10th position being hired now)

o Support staff: 4

36. How many counselors does MSU have for sexual assault victims/survivors at Safe Place, CAPS, and the sexual assault program for each year starting in 2010 and ending in 2017?

Counselors dedicated to supporting sexual assault survivors are housed within MSU's Sexual Assault Program, which is a unit separate from CAPS, but still within MSU's Student Health and Wellness organization. As such, CAPS does not have designated positions for sexual assault counselors. Prior to the August 2017 restructuring of the Student Health and Wellness unit and merger with Counseling and Psychiatric Services, the MSU Sexual Assault Program was a sub-unit of the Counseling Center. All senior staff with CAPS—approximately 24 clinicians—are able to work with sexual assault survivors, and doctoral interns receive advanced training in trauma therapy.

The MSU Sexual Assault Program had one therapist in 2010 and 2011, and two therapists for each year 2012 through 2014. That number increased from two to four therapists in 2015; and four therapists for all of 2016. The Program had five therapists and one crisis counselor in 2017. The Sexual Assault Program currently includes other full-time staff positions including a volunteer coordinator for the 24-hour crisis hotline, a crisis counselor and program advocate, as well as administrative and support staff.

For each year 2010 to present, MSU Safe Place has had four persons offering counseling services each spring and fall semester, two of whom are graduate interns and two of whom are full-time staff members. During the summer, when graduate student interns are unavailable, the two full-time staff members provide counseling services.

37. Are copies of the MSU SAFE and SARV policies provided to MSU students and student athletes? Under these policies, how long is the training, what is the content, and how does it describe what sexual harassment, assault and violence are? (Does it include unwanted touching and/or penetration in its description?)

SAFE and SARV are not policies per se. SARV is the Sexual Assault and Relationship Violence Prevention Program. MSU assumes your reference to SAFE is to either the Sexual Assault First-year Education program created by the predecessor office, I3, or the Safe Place program which provides shelter and other services to survivors of domestic or relationship abuse. The SAFE training was replaced in August of 2016 with a new suite of online training programs titled "Not Anymore." All undergraduate and graduate students are required to complete an annual online training program. First-year students will complete a full-length course and returning students will complete a different, shorter course each year, which explores a related topic at a deeper level. Students will not be able to access important academic information in the student information system, including grades, until they complete this training.

Online training programs for students include information on the following topics:

- Providing information to identify sex discrimination and sexual harassment, including relationship violence and sexual misconduct.
- Raising awareness of the impact of these issues on the campus community and encouraging community members to engage in efforts to end these types of violence.
- Advising members of the MSU community about their rights and reporting options under the *Relationship Violence and Sexual Misconduct Policy*.
- Communicating behavioral expectations for all members of the MSU community as outlined in the policy.
- Connecting community members with support and resources.

The Sexual Assault and Relationship Violence Prevention Program (“SARV”) is a required workshop for all first-year and transfer students. SARV offers a number of peer-facilitated workshops throughout the year. The SARV workshop is a two-hour, peer-facilitated workshop that offers a forum for students to engage in conversation and be educated about sexual assault and relationship violence on campus, and empowers these students to become active members in keeping the MSU community safe. In fall 2017, SARV launched a supplemental workshop for upper class students providing instruction on bystander intervention skills.

SARV also offers an LGBTQ specialized workshop. During this workshop, the format is slightly changed so all scenarios are gender neutral. There is no gender breakout for the second half of the workshop, as there are for other SARV programs. Additional information is provided regarding unique challenges LGBTQ survivors of sexual assault and relationship violence may face, as well as resources to address needs specific to LGBTQ individuals.

SARV provides an International Student SARV Workshop designed to accommodate a wide range of cultural backgrounds, social norms, and education regarding issues of sexual assault and relationship violence. This workshop provides more definitions of terms, education regarding American university culture, and additional information about legal issues and resources for international students.

SARV provides specialized workshops for Greek-affiliated students, called Greeks Take the Lead. The focus of this program, which was developed collaboratively with the Greek community, is to raise awareness about issues of relationship violence and sexual misconduct, recognize ways to intervene, understand the intersection of alcohol and sexual violence, discuss positive tools for supporting victims, and tips for making their environment safer.

The SARV program has also worked with campus partners such as MSU Police and the Title IX Coordinator on three grant-funded programs awarded through Governor Snyder's Campus Sexual Assault Grant Program. These grants have funded development of the following programs:

- Bystander Network training program for area bars and cab companies
- Bystander Intervention workshop for upper class students
- Multi-tiered prevention education program for Greek-affiliated students

38. From the Sexual Violence Advisory Committee (SVAC) formed at MSU on October 15, 2015, what strategies have been identified for recommendation, and what have been the results of the annual public meeting?

The 2015-16 and 2016-17 SVAC Reports to the Title IX Coordinator and the Title IX Coordinator's response thereto are made available to the entire campus community and can be found at: <http://titleix.msu.edu/information-reports/index.html>.

39. Did/does the "No Excuses" campaign at MSU, which began in 2013, reach individuals who are not MSU students but who interact with MSU staff/faculty?

The "No Excuses" program, which was developed internally at MSU, is no longer in use. It has been replaced by MSU's participation in the national "It's On Us" campaign, which is a collaborative effort involving numerous student organizations, governance groups, and campus units. The campaign includes a variety of outreach efforts targeting both students and employees including events, as well as social media messaging, posters, and promotional giveaways designed to raise awareness and community engagement. Each semester, MSU hosts a "week of action" providing concentrated events over a weeklong period to drive community engagement.

40. How successful has the memorandum of understanding between MSU and local police departments regarding sexual assault been? How is this being evaluated? Is this modeled after a MOU between any other university and local police departments?

MSU has entered into MOUs with seven (7) local and state police departments. The agreements have been successful in promoting information flow and cooperation between MSUPD and the other departments. The framework for the MOUs was drawn from the sample MOU provided by the White House Task Force to Protect Students From Sexual Assaults established in 2014.

41. What, if any, changes is MSU making pursuant to the recommendations in the Husch & Blackwell November 2017 report, such as changing the bases of appeals for OIE decisions?

In response to the Phase 1 report issued in November 2017, MSU implemented the following policy changes in January 2018.

January 2018 Policy Revisions:

- Definition of sexual harassment (HB p. 15)
- Definition of consent clarified so it is clear that consent cannot be revoked retroactively (HB p.15)
- Statement that the RVSMP applies to individuals of the same sex (HB p. 16)
- Statement that RVSMP prohibits discrimination on the basis of national origin (HB p. 16)
- Move definition of retaliation from appendix in to the policy (HB p. 17)
- Clarification around interim measures (HB p.19, 22)
- Dismissal of advisor (HB p. 21)
- Clearly state our practice of concurrent notification of outcome (HB p. 21)
- Addition of order of protection information (HB p.22)
- Clarified statement of equal procedural rights (HB p. 25)
- Clarification of investigator role (HB p. 27)
- Clarification of sexual exploitation (HB p. 27)

Additional recommendations outlined in the report, including discussion regarding the bases for appeals, will be the subject of discussion through our RVSM Policy Workgroup later this spring. This multi-disciplinary workgroup reviews the policy each year resulting in a revised policy implemented at the start of each academic year.

42. When will the second phase of Husch & Blackwell's review be completed? Will it still be completed by Spring 2018?

MSU received a preliminary report from Husch Blackwell relating to phase two of the Title IX external review in March 2018. It is anticipated that the report will be finalized during the Spring 2018 semester. The Preliminary Phase Two Report can be found at <http://titleix.msu.edu/information-reports/index.html>. MSU has already begun reacting to recommendations in the preliminary report by restructuring Title IX-related functions to improve coordination and alignment. Additionally, MSU has announced the addition of twelve new staff positions in the newly created Office for Civil Rights and Title IX Education and Compliance, and the newly created Title IX Prevention, Outreach, and Education office, as well as the Office of Institutional Equity. In partnership with the Governor's Office, MSU also announced the addition of four new positions in the Sexual Assault Program.

43. Sexual assault is currently and has been an ongoing problem at MSU and other universities across our state.
- a) What resources does MSU provide to prevent campus sexual assault and what resources does MSU provide to survivors?

- b) What is the utilization rate of those resources?
 - c) How have sexual assault rates been impacted since the introduction of those resources? What has changed since the Nassar case?
- (a) MSU provides many resources to prevent campus sexual assault and to support survivors. In addition to the policies and resources described in response to Questions 3, 4, 11, 14, 32, 36, 37, 38 and 39, MSU provides a variety of training programs to support prevention of sexual misconduct and relationship violence. In addition to the programs listed previously relating to the SARV program, MSU offers workshops delivered by peer educators on bystander intervention strategies and offers a two-hour self-defense workshop. MSU provides the “Not Anymore” online training which is required for all students, staff and faculty. The program consists of separate tracks geared to these various constituencies. In addition, there is annual refresher training for students under the “Every Choice” Program. Further, specialized training is provided to Residence Education and Housing Services Staff, student athletes, athletic coaches and staff, and Greek-affiliated students. Additional voluntary specialized programs are offered to international students as well as LGBTQ students. OIE provides targeted training as requested or recommended to various units of the University.

As described in response to various questions above, MSU also engages in proactive engagement to increase awareness of issues related to sexual misconduct through the “It’s On Us” campaign. MSU also utilizes multi-disciplinary committees, such as the Sexual Violence Advisory Committee and Violence Free Communities Committee to gather input from the community regarding pressing campus climate concerns and seek input and suggestions to improve the campus culture at MSU. In collaboration with these committees, MSU conducts periodic campus climate checks and develops strategies and interventions in response to the information gathered.

Resources available on campus for survivors include:

MSU Safe Place, a University-run stalking, domestic violence, and dating violence shelter, provides free and confidential services and advocacy to persons affected by stalking, domestic violence, or dating violence.

The Sexual Assault Program is a provider of free crisis intervention and advocacy services to survivors of sexual misconduct. It facilitates immediate emergency response and crisis intervention, provides a 24-hour Sexual Assault Crisis Line, and in person medical advocacy. SAP also offers individual and group therapy on a no-cost basis for MSU Students.

MSU Counseling and Psychiatric Services provides individual and group counseling to students, including survivors, in a number of areas such as depression, anxiety, substance abuse, stress management, and other issues.

While not targeted to sexual misconduct survivors, the Employee Assistance Program is a source of referrals and counseling for any employee experiencing issues related to sexual misconduct.

OIE Interim Measures are designed to ameliorate the immediate effects of alleged sexual misconduct while an investigation proceeds. Interim and protective measures are support services, accommodation, and other assistance the university puts in place after receiving notice of incidents of relationship violence or sexual misconduct. These measures can be implemented before any final outcomes (investigatory, disciplinary, or remedial) have been determined. Interim measures are available even if an individual chooses not to report to law enforcement or participate in a university or criminal investigation.

Resource Materials:

MSU has developed and distributed resource guides and other materials to support survivors. Many of these items are provided by service-providing units such as MSU Safe Place and the Sexual Assault Program. MSU provides comprehensive resource guides, which are publicly available at: <http://titleix.msu.edu/find-resources/index.html>. The website and resource guides include information on medical support, confidential counseling and advocacy, interim and protective measures, as well as community, state, and national resources. Following are links to the resource materials available through OIE:

[Title IX Cards](#)

[It's On Us Posters](#)

The Annual Title IX Report is available publicly at:

<http://titleix.msu.edu/information-reports/index.html>

- (b) There is no way to compare the number of individuals who utilize sexual assault resources to the number of survivors, as not all survivors report being sexually assaulted. During the 2017-2018 academic year, CAPS Counseling Services has served 527 students who have reported a history of unwanted sexual contact. All of these students have been offered a referral to the MSU Sexual Assault Program. The percentage who follow through on this option cannot be pulled from the CAPS database. In 2016, the MSU Sexual Assault Program served 573 clients, 195 of whom received individual therapy, and provided 1,485 total therapy sessions. In 2017, those numbers increased to 661 clients served, individual therapy for 291 clients, and 1,874 total therapy sessions.

- (c) As noted in part (b) developing reliable information on the actual number of instances of sexual misconduct occurring in a given period is difficult due to issues such as non-reporting. The number of reports received by OIE and MSUPD has increased year-to-year since 2014, but it is expected that improved reporting procedures and heightened awareness would result in an increase even if the number of instances of sexual misconduct had remained constant or fallen.

In recent years, MSU has worked to raise awareness around relationship violence and sexual misconduct and implemented mandatory reporting protocols. As anticipated, MSU has seen an increase in the number of reported incidents of relationship violence and sexual assault. While there is no direct data from individuals reporting incidents to indicate if a prevention program or availability of support resources precipitated the report, data from the National College Health Assessment in 2016 placed MSU at the top of participating institutions with over 90% of students participating in the survey reporting that they had received information from the university relating to sexual assault and relationship violence.

- 44. Under the Clery Act, colleges and universities that receive federal funding must annually report crimes committed on campus.
 - a) How is MSU currently carrying out its duties under the Clery Act?
 - c) Is there a Clery Compliance Office or Coordinator?
 - d) Has MSU ever received a fine or otherwise been penalized for non-compliance with the Clery Act?
 - e) Were actions committed by Larry Nassar included within the Clery report? If not, why not?
 - f) Is the Clery report released publicly?
- (a) MSU accumulates data required to be contained in the Clery Act report throughout the year and publishes an annual crime and fire statistics report, as required by the statute. Officers receive training regarding Clery reporting responsibilities.
- (c) Yes, the Clery Act Coordinator is Kristine Moore, who chairs the Clery Act Compliance Committee, which has representatives from Student Life, OIE, Office of General Counsel, Athletics, International Studies and Programs, Residence Education and Housing Services, MSUPD, the Provost's Office, Human Resources, and Land Management.
- (d) No.
- (e) Yes, the reports regarding Nassar would have been included in the statistics provided for the year in which the complaint was made. The 2017 Clery Act

report contains a reference to the reports of misconduct by Nassar and an explanation of how the reports were incorporated into the data.

- (f) Yes, it is available at: <http://police.msu.edu/news/annual-security-fire-safety-report/>

45. What training mechanisms are in place to assist MSU law enforcement officers in recognizing the signs of sexual assault?

All MSUPD sworn officers receive training regarding stalking, domestic and relationship violence and sexual assault that includes trauma informed interviewing techniques, referral to campus and other resources and information regarding MSU policies regarding sexual misconduct reporting and investigation. In addition, sworn officers are required to engage in the employee training listed in response to prior questions.

46. What is the protocol that MSU law enforcement officers follow when a complaint of sexual assault is received?

MSUPD maintains written protocols regarding response to complaints of sexual assault and coordination of the working relationships between MSUPD, OIE and the Title IX Coordinator. The protocols are reinforced with training and checklists provided to all MSUPD sworn officers, whether they are part of the Special Victims Unit or not. The set of protocols and check lists is enclosed.

47. After U.S.A. Gymnastics (USAG) fired Nassar as the team doctor, what communications did MSU officials have with USAG regarding this decision? What communications did MSU officials have internally regarding Nassar's role at MSU in light of his firing by USAG, and how soon after the USAG fired him did that happen? Was there ever a consideration of firing or suspending Nassar at that time? If not, why not?

MSU did not become aware that USAG had fired Nassar until September 2016. At the time Nassar ceased consulting with USAG, he announced that he was voluntarily retiring from that work. USAG did not provide any contradictory information to MSU, nor did USAG advise MSU that it had received and investigated complaints of sexual misconduct by Nassar. MSU first learned of Nassar's involuntary termination by USAG through published reports in the media after Nassar had been suspended. Upon learning that Nassar had been involuntarily separated by USAG in connection with the investigation for sexual misconduct, MSU decided that Nassar's failure to have provided this information to MSU and misleading MSU was an additional cause for termination of his employment

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Chairwoman LaSata and Chairman Kesto -29-

March 29, 2018

Thank you for your attention to this matter. Please contact me if you have questions.

Respectfully,

Miller, Canfield, Paddock and Stone, P.L.C.

By: 
Scott R. Eldridge

Enclosure

Cc: Mr. Hassan Beydoun, General Counsel, Michigan House of Representatives
Brian Quinn, Assistant General Counsel, MSU
Patrick Fitzgerald, Esq.