



**Tip of the Week  
Newsletter  
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**Michigan State University & the Office of Civil Rights Agreement Highlights Impartiality, Transparency, and Accountability**

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In the wake of the Michigan State University (MSU) scandal involving Larry Nassar, MSU has reached a resolution agreement (Agreement) with the U.S. Department of Education, Office for Civil Rights (OCR), resolving the OCR's Title IX investigation into MSU entities.<sup>1</sup> Many of OCR's requirements addressed providing remedies to individuals adversely effected by the conduct of Dr. Nassar and MSU-COM Dean William Strampel. However, the majority of the Agreement addressed systemic and procedural changes MSU must make to increase impartiality, transparency, and address accountability shortcomings highlighted by the Nassar situation.

The Agreement outlined several required steps to ensure MSU's processes remain impartial, including the removal of individuals involved in the Title IX process who have potential conflicts of interest. The Agreement called specifically for greater distance between the Title IX function and the Office of General Counsel. MSU's 2014 internal Title IX investigation found Dr. Nassar "not responsible" for misconduct, but the process was rife with procedural impropriety. MSU produced separate investigation reports, and the copy provided to the reporting party excluded extensive commentary on the peculiar nature of Dr. Nassar's clinical practices. Dean Strampel, who was later convicted on charges related to his own sexual misconduct, repeatedly intervened in the process. OCR devoted significant attention to ensuring MSU's processes going forward are reliable and free from inappropriate institutional influence.

For pending Title IX matters, MSU employees who advise on or oversee matters must recuse themselves from the instant case and any others involving one or more of the same parties. MSU policy must explicitly state that coordinators, investigators, decision-makers, and medical or scientific expert witnesses must be free from any conflict-of-interest or bias. The TIXC must report to the President, oversee all Title IX investigations, and have "proper authority and independence free from undue influence or pressure from other individuals or units within the University." Each year, MSU must submit all investigations and determinations to a neutral third-party consultant for review. The consultant will review for adherence to MSU policy and compliance with federal/state statutes. The consultant may not have previously provided legal representation to MSU on any Title IX matter.

The Agreement also emphasized transparency in the process and the importance of appropriately maintaining and communicating past records. Dr. Nassar's conduct spanned several decades and involved hundreds of MSU student-athletes. Past reports of potential misconduct were dismissed or suppressed, and no reliable records existed to help Title IX administrators recognize or address patterns of behavior.

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<sup>1</sup> See the Agreement [here](#).

OCR required MSU to implement several measures designed to make the process transparent and understandable, including a system to ensure patterns of behavior are apparent to appropriate administrators. OCR also stipulated that employee personnel files must receive substantive notation regarding any Title IX-related allegations and their final internal disposition. Additionally, each semester, the President and a designated Trustee must receive a report of all open and resolved Title IX investigations involving employees. All MSU actions taken in response to Title IX-based allegations, including sanctions, in every investigation involving an employee must be appropriately documented. Preliminary investigation reports must be provided to the parties for review before finalization and determination of responsibility. MSU must provide a process for reopening resolved reports when new evidence becomes available. Finally, each employee who is a responding party in a Title IX matter must have included in their personnel file a notation with enough detail to determine patterns of behavior and an indication of any responsibility determination for each incident.

A third major focus area for OCR was employee accountability, with an emphasis on ensuring employees understand their responsibility to report misconduct. Per the Agreement, MSU must investigate prior failures to report potential policy violations. This is interesting given OCR's stance regarding institutional liability based on notice to responsible employees. Under the proposed Title IX regulations OCR published in November 2018, institutional liability only attaches when written, signed notice is provided to an administrator with appropriate authority to address the allegations. Practically speaking, there are very few employees at any given institution with sufficient authority to redress alleged harassment. OCR's mandate to MSU regarding employees' past knowledge of potential discrimination indicates a heightened standard of institutional accountability that may not survive past the imposition of the final regulations.

The Agreement required MSU to identify current and past employees with knowledge of potential misconduct by Dr. Nassar or Dean Strampel and review the information to determine if employees failed to act in accordance with MSU policy and state/federal law. OCR started the list for MSU, but indicated that MSU needed to further assess employees, including "the former President (as of the 2015-2016 academic year), the Provost, the Associate Vice President for Academic Human Resources, employees of the Office of the General Counsel, and the former head coach of the women's gymnastics team." OCR recommended a range of sanctions MSU should consider for individuals who failed to comply with policy or law, including "disciplinary proceedings; revocation of tenure; revocation of honorary and other titles; demotion; reassignment; prohibition from University facilities, programs, and activities; removal of benefits; pay reductions; removal of housing benefits; permanent removal from administrative roles; revocation of honorary and other titles; prohibition from University facilities, programs, and activities."

In addition to the three major focus areas and individual remedies for victims of Nassar and Strampel, MSU is required to assess any remaining impact on programmatic access and remediate appropriately, and to assess the value of additional training provided to employees, students, and student-athletes in particular. Certain MSU officials, "including the Board of Trustees and President, select staff from the Title IX Office and OGC, and select administrators" must schedule and plan to attend intensive Title IX training provided by OCR officials. Finally, MSU is required to provide sufficient notice regarding its policy, process, responsible administrators, and reporting options to participants of its youth programs.

Title IX administrators may be tempted to dismiss the relevance of the OCR-MSU Agreement due to the pervasiveness and severity of the underlying conduct. However, there are several valuable takeaways for all educational environments. Based on OCR's review of the Title IX program at MSU, Title IX Administrators should review their own programs and consider:

- Are the President, Board of Trustees, General Counsel's Office, or any other administrators identified in the Agreement part of the institution's resolution process? Is that involvement appropriate, or is there potential for the appearance of partiality or conflicts-of-interest?
- Does the institution keep a consolidated record of past misconduct? Does the Title IX Coordinator have unhindered access to those records?
- Who is a responsible employee? Do responsible employees understand their obligations? What are the potential ramifications for a responsible employee who fails to meet their reporting obligations?
- Are there certain programs or groups where additional or specialized training would be appropriate, such as a clinical setting, athletics, externship office, etc.?
- When are Title IX statistics aggregated, what information is included, and who reviews them? How often are climate surveys conducted and what happens to the data? How has the Title IX program adjusted in response to these results?

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