

MICHIGAN STATE UNIVERSITY INDEPENDENT INVESTIGATION REPORT

February 28, 2024

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I. EXECUTIVE SUMMARY

The Office of Audit, Risk and Compliance (“OARC”) of Michigan State University (“MSU” or “the University”) retained Miller & Chevalier Chartered (“Miller & Chevalier”) on October 30, 2023, to conduct an independent investigation into allegations raised by the MSU Board of Trustees (“Board of Trustees” or “Board”) member Brianna Scott (“Trustee Scott”). Trustee Scott raised her allegations in a public letter dated October 20, 2023, which was published in The State News on October 22, 2023,¹ in which she asserted that MSU Board of Trustees Chair Dr. Rema Vassar (“Chair Vassar”) violated various Board of Trustees policies, including the Board of Trustees Code of Ethics and Conduct (“Code of Ethics”), the Board of Trustees Bylaws (“Trustee Bylaws”), and the Board of Trustees Conflict of Interest Policy (“Trustee Conflict of Interest Policy”). During the investigation, the OARC received additional allegations of misconduct, including from Chair Vassar,² and expanded the scope of the investigation to include those allegations. In addition, in November 2023, the University became aware of a leak related to the then-ongoing search for the next MSU president and of allegations that the leak came from one or more Trustees. The OARC then instructed Miller & Chevalier to investigate the source of the leak. While the investigation commenced because of allegations raised against Chair Vassar, interviews and

¹ Alex Walters, *MSU trustee calls for board chair Vassar’s removal over ‘harmful consequences’ of her bullying, plotting*, The State News (Oct. 22, 2023), <https://statenews.com/article/2023/10/msu-trustee-calls-for-board-chair-rem-a-vassars-removal-over-harmful-consequences-of-her-bullying-plotting>; Letter from Brianna Scott, MSU Tr., to Bd. of Trs. (Oct. 20, 2023), https://www.scribd.com/document/679383676/Letter-from-MSU-trustee-Brianna-Scott#from_embed (all references to allegations raised by Trustee Scott in this report refer to this letter).

² Chair Vassar raised the following allegations: (1) Trustee Byrum’s admitted perjury regarding her property tax affidavit; (2) 880 First Street, Muskegon, MI property allegations made at the Board of Trustees meeting. Please include timestamped documentation of Trustee Scott’s inquiry into potential conflicts and notice of clearance before she partnered with Joel Ferguson (*see infra* section IV.G.1.); (3) Travel on donors’ planes, cars, RVs, and recreational watercraft by current Trustees and former Trustee Foster (*see infra* section IV.B.2.a.); (4) Employment of Trustees’ relatives (including in-laws) within MSU, including former Trustee Foster; (5) Trustees’ meetings, calls, texts, and emails with local, state, and federal elected officials, e.g., the Mackinac Policy Conference, meetings regarding appropriations, calls regarding the Black Voters’ Resolution last year, calls and texts between Trustee Byrum and officials who spoke on her behalf for Chair Vassar’s removal, meetings Trustees have engaged in Washington, D.C., Trustee Byrum’s admitted dinners with Senator Stabenow, MSU Trustee Renee Knake Jefferson’s (“Trustee Knake Jefferson”) engagement with the Governor and her threats to remove Trustees who disagreed with her, Trustee Scott’s call with Attorney General Dana Nessel she referenced before the Board’s April meeting, all attendees in the meeting with Lansing Mayor Andy Schor, Trustee Knake Jefferson’s calls and meetings regarding her attempted run for office, etc.; (6) Acknowledgments or congratulatory messages for awards or honors received by current or past Trustees that appeared in any medium (print, television, social media, etc.) and included their title as a member of the Board of Trustees (*see infra* section IV.B.1.); (7) Trustee Knake Jefferson’s hyperlink to her Board of Trustees position on her personal consulting website (*see infra* section IV.B.1.); (8) Interference with an ongoing investigation by Trustees Knake Jefferson, Byrum, and Scott with outreach to and communication with Brenda Tracy and possibly her attorney either directly or through third parties; (9) Interference by Trustees during the February 13, 2023, response (*see infra* section IV.A.4.); (10) Trustee Scott’s release of her letter to media outlets and Trustee Knake Jefferson’s participation in drafting the letter (*see infra* section IV.H.); (11) The continued leaks to The State News reporter, Alex Walters, of Board of Trustees’ confidential information and documents; (12) A thorough investigation of Trustee Byrum’s voting record on matters concerning clients of Trustee Byrum and Fisk Communication while in office; and (13) Former Trustee Foster’s admission to writing a letter of support for Chair Vassar’s removal for Joel Ferguson who is not able to compose such a document.

documents reviewed also involved allegations related to other Trustees and their conduct. Therefore, this report will address conduct by both Chair Vassar and other Trustees as appropriate.

Miller & Chevalier’s investigation focused on determining whether the various allegations were factually supported and, if so, whether the underlying conduct breached Board of Trustees policies or Trustee Bylaws. In addition to the allegations in Trustee Scott’s letter, the investigation focused on: (1) issues raised publicly by Chair Vassar on October 23, 2023, in response to Trustee Scott’s letter; (2) allegations raised by Chair Vassar in a November 3, 2023, email to MSU Board of Trustees Vice Chair Dan Kelly (“Trustee Kelly”) and Associate Vice President and Chief Audit, Risk and Compliance Officer, Marilyn Tarrant; (3) allegations that a member of the Board of Trustees leaked confidential information related to the MSU presidential search, specifically the identity of the two final candidates and the date, time, and expected result of the Board of Trustees vote to appoint Dr. Kevin Guskiewicz (“Dr. Guskiewicz”) as MSU’s next President; (4) allegations of other instances of leaks by members of the Board of Trustees;³ and (5) additional allegations that relate to issues raised in Trustee Scott’s letter, including conduct by Chair Vassar and other Trustees considered to be outside the scope of the Board of Trustees’ authority, as well as conduct that has been perceived as bullying or retaliatory.⁴ In total, Miller & Chevalier’s investigation considered over fifty separate allegations.

Both Chair Vassar and MSU Trustee Dennis Denno (“Trustee Denno”) were represented by counsel throughout the investigation, including during their interviews, all of which were held in person. Following their interviews, counsel for Chair Vassar and Trustee Denno provided written statements for their respective clients. Miller & Chevalier has taken those statements into consideration, but where there are inconsistencies between the interviews and counsel’s follow-up correspondence, Miller & Chevalier has placed greater weight on the statements made during interviews.

The independent investigation substantiated certain, but not all, of the allegations raised. In some instances, Miller & Chevalier corroborated specific conduct, but did not find that it constituted a policy violation. Detailed findings and analysis can be found in the body of this report.

In addition, during the investigation, Miller & Chevalier identified overarching issues and concerns that bear discussion here:

- ▶ *Recent crises and history.* In recent years, MSU has faced a series of crises and controversies. Since 2016, MSU has grappled with the Larry Nassar crisis, including allegations that the University mishandled an internal investigation into the first Title IX complaint against Nassar.⁵ The Nassar crisis greatly impacted the MSU community and eroded confidence in

³ One representative example is an article by NC Newsline published on December 5, 2023, quoting an alleged conversation with a member of the Board of Trustees, who reportedly spoke on the condition of anonymity to the outlet, about MSU’s interim president. Joe Killian, *Trust, rumors and tough decisions as UNC-Chapel Hill chancellor weighs MSU presidency*, NC Newsline (Dec. 5, 2023), <https://ncnewsline.com/2023/12/05/trust-rumors-and-tough-decisions-as-unc-chapel-hill-chancellor-weighs-msu-presidency/>.

⁴ Miller & Chevalier received additional allegations, during interviews or in writing, from other current Trustees, one or more former Trustees, administrators, and members of the MSU community. Not all of these were separately investigated. In some instances, these allegations overlapped with issues already under review, and in several instances, because of the timing or lack of specificity of an allegation, the investigation team could not fully review it.

⁵ See generally Emma Winowiecki, *Timeline: The Larry Nassar Scandal at Michigan State University*, Michigan Radio, https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?source=1wYooCtEmKjy0_WPu-

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the Administration and the Board. Separately, in 2022, then-Provost Teresa K. Woodruff, Ph.D. and then-current MSU President Samuel L. Stanley Jr., M.D., forced the resignation of Dr. Sanjay Gupta (“Dr. Gupta”) as Dean of the Broad College of Business, following allegations that he failed to file a report with the Office of Institutional Equity (“OIE”) in compliance with the University’s mandatory reporting requirements.⁶ In addition, in December 2022, the University launched an external investigation into allegations that now-former MSU football coach Mel Tucker sexually harassed Brenda Tracy, a rape survivor and activist.⁷ On February 13, 2023, the MSU community suffered a devastating mass shooting that took the lives of three students.⁸

Alongside these issues, in the last six years, MSU has seen rapid turnover in its Office of the President. On January 24, 2018, MSU’s then-President Lou Anna K. Simon resigned amid growing scrutiny of how she managed reports of abuse—particularly related to Nassar—while serving at the University.⁹ Since Dr. Simon’s resignation, MSU has appointed five presidents, with the fifth, Dr. Guskiewicz, slated to begin his term on March 4, 2024.¹⁰

Each of these events is sufficient to test the strongest of institutions and governing bodies. For MSU, this series of crises, coupled with a rapid change in presidents, has led to a fraught relationship between the Administration and the Board of Trustees, resulting in the Board of Trustees at times assuming an outsized role in the institution.

- ▶ *Trustee Overreach.* A training provided to the Board of Trustees on June 22, 2022, instructed them that sound governance in an academic setting requires understanding the “foundational tenet” of shared governance, a principle “that acknowledges the final institutional authority of governing boards and distributed authority to the administration and faculty.”¹¹ Specifically, sound governance includes understanding that the role of a

[Bp6wUCrUENHa71jmjBRrz7Z7Y&font=Default&lang=en&initial_zoom=2&height=650](https://www.msu.edu/about/history) (last visited on Feb. 26, 2024).

⁶ See generally *Timeline: The controversy over Sanjay Gupta’s resignation*, The Detroit News (Dec. 15, 2022), <https://www.detroitnews.com/story/news/local/michigan/2022/12/15/timeline-sanjay-gupta-msu-business-school-dean-resignation-controversy/69727984007/>.

⁷ See generally *Jones Day, Report of Investigative Findings Regarding Alleged Unauthorized Disclosures of Confidential Information Concerning Harassment Investigation on Mel Tucker*, MSU (Dec. 29, 2023), <https://msu.edu/-/media/assets/msu/docs/issues-statements/12292023-jones-day-report-of-leak-investigation15389320126.pdf?rev=2168cf5b55d840ef834dce6f471e8bb4&hash=6DE49C6CE5C29B2DC81EF989C40A9A1C>.

⁸ Police and Public Safety, *News Release: Active Violence Incident*, MSU (Feb. 14, 2023), <https://dpps.msu.edu/news-and-alerts/news/news-release-active-violence-incident>.

⁹ David Jesse, *MSU President Lou Anna Simon steps down amid fallout from Larry Nassar case*, Detroit Free Press (Jan. 24, 2018), <https://www.freep.com/story/news/local/michigan/2018/01/24/michigan-state-larry-nassar-simon/1060159001/>.

¹⁰ John Engler (2018–2019, Interim President), Satish Udpa (2019, Acting President), Samuel L. Stanley Jr., M.D. (2019–2022, President), and Teresa K. Woodruff, Ph.D. (2022–Present, Interim President). *History*, MSU, <https://msu.edu/about/history> (last visited Feb. 27, 2024).

¹¹ *MSU Board of Trustees Retreat: Leading Governance Practices for High-Performing University Boards*, Association of Governing Boards of Universities and Colleges (“AGB”) & Dentons US LLP, (June 22, 2022) (on file with MSU).

fiduciary is to provide oversight of the institution while delegating its management and strategic planning to the Administration. Under its own bylaws, the Board:

exercises the final authority in the government of the University In exercising its responsibility, the Board delegates to the President of the University and through the President to the faculty, appropriate authority and jurisdiction over matters for which they are held accountable by the Board. These matters include educational policy and the development of a strong and efficient organization with which to accomplish the objectives of the University.¹²

Much of the conduct that Miller & Chevalier investigated arose from a misunderstanding or misapplication of shared governance principles. Chair Vassar and Trustee Denno, in particular, have engaged in conduct that exceeds the scope of their authority. The most significant examples are discussed in this report, but document review raised additional examples beyond those raised by the specific allegations, signaling a potentially larger issue than reported to Miller & Chevalier.¹³ The identified conduct has created fissures that have weakened the governance structure of the University and encouraged and created openings for members of the MSU community to also circumvent the Administration and reporting protocols, by leveraging individual Board members to act on their behalf.¹⁴

- *Fear of retaliation.* The Board dynamics, particularly the actions of Chair Vassar and Trustee Denno, have created a fear of retaliation amongst administrators and other MSU personnel. A broad cross-section of individuals with whom Miller & Chevalier spoke expressed fear that participating in interviews would result in either Chair Vassar or Trustee Denno taking adverse action against them. Interviewees made comments such as, “This Board has been known to retaliate There have been fear tactics that have been put into place. This Board has been difficult to work with, but I don’t want any blow back.” Some other

¹² Bd. of Trs., *Bylaws-Preamble*, MSU, <https://undocumented.msu.edu/bylaws-ordinances-policies/bylaws/preamble.html> (Jan. 10, 2003 ver.) (To the extent that there have not been material amendments to the Bylaws, the report will refer to the September 2023 version of the Bylaws. In cases where the language has since changed and would implicate the analysis, the report will cite to the previous version dated January 2003).

¹³ For example, the investigation identified an email from Trustee Denno, on behalf of a personal friend, requesting the MSU Housing Services Department ensure two students were roomed together, stating “it would be a priority for them and me to be housed together.” In another instance, Trustee Denno made a request to the Board Secretary to set up a tour of the MSU Apple Developer Academy for Trustee Denno and his friend, an app developer, stating “I want him to see the Academy and hopefully build a relationship with them.” Trustee Denno undertook both actions without involving the Interim President or the Provost, contrary to Bylaw requirements applicable at the time. See Bd. of Trs., *Bylaws-Article 7: Relation of Board and the University Faculty, Staff, and Employees*, MSU <https://undocumented.msu.edu/bylaws-ordinances-policies/bylaws/article-7.html> (Jan. 10, 2003 ver.) (hereinafter “2003 Trustee Bylaws Article 7”).

¹⁴ An illustrative example occurred in May 2023 when Trustee Denno advocated on behalf of an employee in MSU’s Migrant Student Services office and requested that the MSU Government Relations office set up a meeting for the employee, stating, “This is something that is important to me and Chair Vassar, can you assist this team in getting a meeting with the U.S. Sec. of Ag.? Thank you and we look forward to hearing back from you.”

Interviewees noted that “[c]oncerns around the fear of retaliation are mainly [from] Vassar. No one wants to be subject to Denno’s wrath, but no one thinks it’s a career ender.”

Miller & Chevalier credits the sincerity of these statements and, as a result, will not be disclosing the names of Interviewees or attributing statements to any particular individuals who participated in the investigation. In order to protect confidentiality, the report will refer to individuals as “Interviewee” (or another applicable designation) with an assigned number (e.g., Interviewee 1, Interviewee 2, Former Trustee 1, Third Party 1).¹⁵

Some of the conduct described by Interviewees as informing their fear of retaliation was manifested in Miller & Chevalier’s own interactions with Trustee Denno. At the close of his final interview, Trustee Denno warned that if Miller & Chevalier’s report “solely attacks” Chair Vassar, “I am going to publicly say this is a public lynching.” Miller & Chevalier’s independence, and the integrity of this report, are unaffected by these comments. However, there is a well-based concern that the impact of similar conduct towards a University employee, regardless of seniority, could be chilling.

In interviews, Miller & Chevalier reminded Trustees and other Interviewees of the Code of Ethics prohibition against retaliation. Now that the investigation is complete and findings are issued, the reminder bears repeating.

- ▶ *Incivility amongst colleagues.* Under Standard 8 of the Code of Ethics, Trustees commit to “support open communication, transparency, and the free expression of ideas and will not condone any form of deceit, incivility, intimidation, silencing, or retaliation.”¹⁶ During the investigation, Miller & Chevalier identified conduct that falls short of that commitment. Emails reflect Trustees frequently communicating in uncivil and disrespectful tones. Miller & Chevalier witnessed firsthand some of that conduct during interviews, most notably from Chair Vassar and Trustee Denno, who at times referred to colleagues in a demeaning manner. As the highest governing body at MSU, the Board of Trustees plays a critical role in setting the tone for the institution. Interviewees from a cross-section of the University, who have observed Board dynamics, reported both a fractured Board plagued by distrust and an environment in which colleagues no longer assume positive intent and often act as adversaries. These observations cannot be ignored. They signal that the tone and culture at the Board level is already felt by at least some, and if left unchecked, could permeate other aspects of MSU culture.

A detailed discussion of our findings, analysis, and recommendations follows. Miller & Chevalier’s recommendations include enhancements to MSU and Board of Trustees policies and procedures as well as corrective action for Chair Vassar, Trustee Denno, and Trustee Scott, as follows:

- ▶ Based on our findings of fact and analysis of the alleged conduct under applicable Trustee policies and Bylaws, and as summarized in our Conclusions,¹⁷ Miller & Chevalier’s

¹⁵ In addition, to further mitigate the risk of possible disclosure, the report will not refer to these individuals’ gender, but will use “they” when referring to them.

¹⁶ Bd. of Trs., *Code of Ethics and Conduct* ¶ 8, MSU (adopted May 15, 2020), <https://trustees.msu.edu/about/code-of-ethics-and-conduct.html> (hereinafter “Code of Ethics”).

¹⁷ See *infra* section V.

recommended corrective action for Chair Vassar’s violations of Board policies and Bylaws is referral to the Governor for review and consideration pursuant to MCL 168.293.¹⁸

- ▶ Based on our findings of fact and analysis of the alleged conduct under applicable Trustee policies and Bylaws, and as summarized in our Conclusions,¹⁹ Miller & Chevalier’s recommended corrective action for Trustee Denno’s violations of Board policies and Bylaws is referral to the Governor for review and consideration pursuant to MCL 168.293.²⁰
- ▶ Based on our findings of fact and analysis of the alleged conduct under applicable Trustee policies and Bylaws, and as summarized in our Conclusions,²¹ Miller & Chevalier’s recommended corrective action for Trustee Scott’s violation of Standard 6 of the MSU Board of Trustees Code of Ethics and Conduct is no more than censure.²²

II. BACKGROUND

On October 20, 2023, Trustee Scott sent a letter to her fellow Trustees raising allegations regarding Chair Vassar’s conduct and calling for her resignation. Trustee Scott also sent the letter to The State News, the student newspaper of MSU, which published the letter on its website on October 22, 2023.²³ Trustee Scott’s allegations fall into four general categories: (1) that Chair Vassar acted outside the scope of her authority as Chair and Trustee, (2) that Chair Vassar has a potential conflicting relationship with an MSU donor, (3) that Chair Vassar engaged in conduct inconsistent with confidentiality obligations, and (4) that Chair Vassar engaged in “bullying” of Interim President Woodruff.

Trustee Scott reported to Miller & Chevalier that after her letter’s publication, she faced threats and attacks that she perceived to be the direct result of having raised allegations against Chair Vassar. Significantly, on December 1, 2023, protestors assembled on the front lawn of Trustee Scott’s law firm holding signs and shouting obscenities directed at Trustee Scott.²⁴ Separately, on November 22, 2023, Trustee Scott received a racist and threatening letter that appears to have been sent from someone associated with the College of Education at Wayne State University. Although these incidents are not within the scope of this investigation, and thus Miller & Chevalier did not investigate these incidents, they are included here for completeness.²⁵

¹⁸ See Code of Ethics § Report and Enforcement.

¹⁹ See *infra* section V.

²⁰ See Code of Ethics § Report and Enforcement.

²¹ See *infra* section V.

²² See Code of Ethics § Report and Enforcement.

²³ Alex Walters, *supra* note 1.

²⁴ The video was originally shared on Facebook, however as of February 26, 2024, the video has been taken down. It was available at: <https://www.facebook.com/share/v/krg6FXFhHVqSGnhj/?mibextid=qi2Omg>.

²⁵ Letter to Trustee Scott, https://www.millerchevalier.com/sites/default/files/resources/Misc/Report_Hate-Mail-from-WSU-College-of-Education.pdf (received Nov. 22, 2023).

On October 23, 2023, Chair Vassar issued a public statement disputing Trustee Scott's allegations, calling them "fabrications, misstatements, innuendo, and untruths."²⁶ In that response, Chair Vassar included allegations of her own. On November 3, 2023, Chair Vassar sent additional allegations to Marilyn Tarrant, Associate Vice President and Chief, Audit, Risk and Compliance Officer, to Trustee Kelly in his role as Chair of the Committee on Audit, Risk and Compliance of Board of Trustees (the "ARC Committee"), and to the Board Secretary. Chair Vassar's allegations relate to Trustees' relationships with donors, employment of Trustees' family members, Trustees' relationships with elected officials, Trustees' use of their positions for self-promotion, Trustees' leaks of confidential information to the press, and Trustees' conflicts of interest.²⁷ These allegations are addressed in the report.

On October 24, 2023, MSU's OARC initiated an investigation into the allegations raised by Trustee Scott and Chair Vassar. The OARC, in consultation with the General Counsel and the ARC Committee, determined it was appropriate to engage an outside law firm to conduct an independent investigation. The OARC engaged Miller & Chevalier on October 30, 2023, and Miller & Chevalier commenced its investigation on November 1, 2023. The OARC has reporting lines both to the ARC Committee and to the President. However, because aspects of the investigation involved members of the ARC Committee and the Office of the President of MSU, neither the OARC nor Miller & Chevalier involved these reporting lines during this investigation.

During the pendency of Miller & Chevalier's investigation, the names of the two MSU presidential search finalists—Dr. Guskiewicz and Taylor Eighmy ("Dr. Eighmy")—were leaked to the media beginning on or around November 10, 2023. Given the confidential nature of the search and the Board's role, the OARC determined the leak was within the scope of Miller & Chevalier's investigation on November 18, 2023. Additional allegations²⁸ and issues identified by Miller & Chevalier through document review and interviews were also included by the OARC in the investigation's scope.²⁹

Miller & Chevalier requested and received access to approximately 82 GB of records and reviewed over 10 GB after applying search terms. These records include emails; MSU records; documents that Interviewees self-selected; text messages and messenger application communications; social media postings and messages; audio files; media reports; and other relevant documents and electronic data. Miller & Chevalier conducted in-person searches or remote imaging of cell phones utilizing tailored search terms within a specified time period relevant to the investigation. Six of the eight trustees and the Board Secretary granted Miller & Chevalier access to their cell phones. Trustee Denno and Chair Vassar declined to cooperate in the cell phone review. Miller & Chevalier afforded

²⁶ Alex Walters & Theo Scheer, 'Fabrications and misstatements': MSU board chair Vassar disputes accusations, *The State News* (Oct. 24, 2023), https://statenews.com/article/2023/10/msu-board-chair-vassar-disputes-accusations?ct=content_open&cv=cbox_latest; Rachel Greco, *Statements from Rema Vassar, Brianna Scott, more on recent MSU board dispute*, *Lansing State Journal* (Oct. 24, 2023), <https://www.lansingstatejournal.com/story/news/local/2023/10/24/statements-rem-a-vassar-brianna-scott-msu-trustees/71302847007/>; Rema Vassar, PhD, MSU Board Chair, *Setting the Record Straight*, <https://www.documentcloud.org/documents/24080679-chair-vassars-statement?embed=true&responsive=false&sidebar=false> (last visited Feb. 27, 2024).

²⁷ See *supra* note 2.

²⁸ See *infra* notes 40, 97, 104.

²⁹ See Preliminary Work Plan from Miller & Chevalier to Marilyn Tarrant, Assoc. Vice President and Chief Audit, Risk and Compliance Officer, Brian Quinn, Vice President for Legal Affs. and Gen. Couns., and Shannon Torres, Assoc. Gen. Couns. (Nov. 3, 2023).

Chair Vassar and Trustee Denno, through their counsel, the opportunity to self-select cell phone data relevant to the investigation, but neither of them did so.

Between November 2023 and February 2024, Miller & Chevalier conducted sixty-nine interviews of forty-three individuals, including members of the Board, the Administration, faculty, members of the MSU community, and media. Miller & Chevalier interviewed all eight Trustees. Interviews lasted between two to five hours, with most of the interviews taking place in-person in East Lansing. Chair Vassar participated in three interviews lasting a total of approximately fifteen hours. Miller & Chevalier appreciates Chair Vassar's cooperation in that regard.

III. BYLAWS AND RELEVANT POLICIES

Miller & Chevalier analyzed its factual findings under the standards set forth in the Trustee Bylaws and in Trustee policies, which are summarized below. This report contains discussions and interpretations of the policies to determine their applicability, and in some instances, Miller & Chevalier notes that there is not a policy that applies or relates to certain findings or conduct.

A. Board of Trustees Bylaws

The Trustee Bylaws “ensure that the conduct of [the Board’s] own affairs will be in accord with the highest standards of educational administration.”³⁰ With respect to authority, “the [B]oard delegates to the [P]resident . . . appropriate authority and jurisdiction over matters for which they are held accountable by the [B]oard. These matters include educational policy and the development of a strong and efficient organization with which to accomplish the objectives of the University.”³¹ The Trustee Bylaws designate the “president, as the principal executive officer of the University,” who in that capacity, “shall exercise such powers as are inherent in the position in promoting, supporting, and protecting the interests of the University and in managing and directing all its affairs.”³² In keeping with that designation, prior to an October 9, 2023, amendment, Article 7 of the Bylaws provided that “[a]ll communications from the Board or any of its committees addressed to any officer, professor or instructor, or other employee of the University shall be transmitted through the office of the President of the University.”³³ Finally, the Bylaws confer collective authority upon the Board, providing that “[t]he authority of the Trustees is conferred upon them as a board, and they can bind the corporation and the University only by acting together as a board. No individual member shall commit the board to any policy, declaration, or action without prior approval of the board.”³⁴

³⁰ Bd. of Trs., *Bylaws-Index*, MSU, <https://trustees.msu.edu/bylaws-ordinances-policies/bylaws/index.html> (last visited Feb. 27, 2024).

³¹ Bd. of Trs., *Bylaws-Preamble*, MSU, <https://trustees.msu.edu/bylaws-ordinances-policies/bylaws/preamble.html> (last visited Feb. 27, 2024).

³² Bd. of Trs., *Bylaws-Article 4: Officers and Organization of the Board*, MSU, <https://trustees.msu.edu/bylaws-ordinances-policies/bylaws/article-4.html> (last visited Feb. 25, 2024).

³³ 2003 Trustee Bylaws Article 7.

³⁴ Bd. of Trs., *Bylaws-Article 13: Collective Authority and Action*, MSU, <https://trustees.msu.edu/bylaws-ordinances-policies/bylaws/article-13.html> (last visited Feb. 23, 2024).

B. The Code of Ethics

The Code of Ethics sets forth the principles governing the conduct of Trustees. Standards 3, 6, 7, and 8 are most relevant to the allegations under review. Standard 3 of the Code Ethics commits Trustees to avoid “conflicts of interest and appearances of impropriety” and to refrain from accepting “special benefits or anything of value for [themselves] or others.”³⁵ Standard 6 reinforces that the Board is a “supervisory and policymaking body of the institution” and prohibits Trustees from disclosing nonpublic information. Standard 7 notes that Trustees must “avoid involvement in administrative matters not subject to the direct authority of the Board”³⁶ and Standard 8 commits Trustees not to condone “deceit, incivility, intimidation, silencing, or retaliation.”³⁷

C. The Trustee Conflict of Interest Policy

The Trustee Conflict of Interest Policy supplements the Code of Ethics by emphasizing Trustees’ fiduciary responsibility to the University and obligating them to “remain free from the influence of, or the appearance of, any conflicting interest in fulfilling their Board duties.”³⁸

D. Trustee Tickets, Travel, and Taxation Guidelines

The Trustee Tickets, Travel, and Taxation Guidelines stipulate travel policies for Trustees. The Guidelines also provide a non-exhaustive list of examples of MSU business purposes.³⁹

IV. FINDINGS

In this section, Miller & Chevalier sets forth and analyzes its factual findings and applicable policies to determine whether any violations have occurred.

A. Allegation that Chair Vassar Acted Outside the Scope of Her Authority

Trustee Scott alleges that Chair Vassar acted outside the scope of her authority as Chair and provides specific examples in support of her claim, specifically that Chair Vassar attempted to negotiate a settlement with Dr. Gupta without authority, that Chair Vassar unilaterally released a Quinn Emanuel report of its investigation related to Dr. Gupta’s resignation as Dean of the Eli Broad College of Business, that Chair Vassar engaged in unauthorized discussions concerning the release of the privileged documents connected to the Attorney General’s investigation related to Larry Nassar, and that she attempted to influence Security Risk Management, LLC (“SRMC”) report findings. In this section, Miller & Chevalier reviews each of these allegations in turn.

³⁵ See Code of Ethics ¶¶ 3, 4.

³⁶ See *id.* ¶ 7.

³⁷ See *id.* ¶ 8.

³⁸ Bd. of Trs., *BOT 103: Board of Trustees Conflict of Interest Policy* § II(b), MSU (last amended May 15, 2020), <https://trustees.msu.edu/bylaws-ordinances-policies/policies/01-01-10.html> (hereinafter “Trustee Conflict of Interest Policy”).

³⁹ *Trustee Tickets, Travel, and Taxation Guidelines*, MSU (on file with MSU).

1. Allegation that Chair Vassar Negotiated Settlement Terms with Dr. Gupta

Trustee Scott claims that Chair Vassar attempted “to negotiate a settlement with Sanjay Gupta in his lawsuit against the University without authority to do so from the interim president or members of the [Board of Trustees].”⁴⁰ Trustee Scott claims that, as part of the settlement discussions, Chair Vassar included a draft statement on behalf of the Board of Trustees that the Trustees had not seen, let alone to which they agreed. In a public response, Chair Vassar denied the allegations.⁴¹

Summary of Factual Findings

Based on interviews and documentary evidence, Miller & Chevalier substantiates the allegation that Chair Vassar engaged in at least one settlement discussion with Dr. Gupta and his counsel and likely directed the preparation of a draft Board statement as part of the settlement, without the knowledge of the full Board of Trustees and without appropriate authority pursuant to applicable MSU and Board of Trustees policies.

In August 2022, Dr. Gupta resigned as Dean of the Eli Broad College of Business following an OIE investigation finding that he violated reporting protocols under MSU’s Relationship Violence and Sexual Misconduct and Title IX Policy. Dr. Gupta challenged the decision and threatened legal action. In the fall of 2022, the Administration, through the MSU General Counsel, commenced settlement negotiations with Dr. Gupta. The General Counsel, acting on the Administration’s behalf, kept the Board of Trustees apprised of the negotiations.

The investigation revealed that negotiations between the Administration and Dr. Gupta hit an inflection point in early February 2023, after the Board of Trustees received a letter from Dr. Gupta’s counsel urging prompt resolution of the dispute. Indeed, email correspondence between February 1 and February 6, 2023, reflects an increased interest by the Board of Trustees in the negotiations, which continued to be led by the General Counsel, at the direction of the Administration. That correspondence reflects the Board of Trustees’ understanding that settlement authority rested with the Administration. Specifically, an email from Trustee Kelly to the Board states, “[M]y position is any settlement at this time is under [Interim President Woodruff’s] authority as president. I believe the Board would have greater authority to resolve a lawsuit, but only after it has been filed.” In that same chain of correspondence, on February 7, 2023, the General Counsel assured the Board of Trustees of Interim President Woodruff’s engagement in the settlement negotiations and interest in conferring with the Board of Trustees on the status of negotiations. Email reflects that a meeting between the Interim President and the Board was scheduled for February 8, 2023, at 4:00pm.

The investigation identified that, separate from the Board discussions, on February 7, 2023, Chair Vassar received an email from the outside counsel for the Board attaching a draft statement from the Board of Trustees intended for Dr. Gupta. No other Trustees or Administrators appear in the email. In the email, outside counsel for the Board states that they will call Chair Vassar to discuss the draft

⁴⁰ In their November 8, 2023, letter sent to the OARC and Miller & Chevalier, Former Trustee 1 additionally claimed that Alec McAree, MSU alumni and MSU Foundation Board member, was in contact with Chair Vassar during early 2023 concerning a settlement. Former Trustee 1 also stated that MSU alumni Kim Popovits may have been involved in the settlement negotiations. Although our investigation demonstrated that Alec McAree and Kim Popovits repeatedly voiced to the Board their support for a resolution of Dr. Gupta’s dismissal and claims, there is no evidence that either individual participated in settlement negotiations between Dr. Gupta and Chair Vassar.

⁴¹ Rachel Greco, *supra* note 26.

statement. The February 7, 2023, email provides the first evidence of a draft Board statement to be used as part of the settlement.

The February 7, 2023, email is particularly notable because in her first interview with Miller & Chevalier, Chair Vassar denied having any involvement in drafting a Board statement to present to Dr. Gupta and claimed not to have seen the statement until a Board meeting the morning of February 9, 2023. In that same interview, Chair Vassar told Miller & Chevalier that Trustee Kelly had “co-collaborated” with outside counsel for the Board to prepare the statement. When asked about her involvement in negotiations with Dr. Gupta, Chair Vassar stated she had attended settlement discussions with Dr. Gupta, but that negotiations were led by the General Counsel and Trustee Kelly. The General Counsel and Trustee Kelly deny the assertion that they led the negotiations.

In her second interview, when presented with the February 7, 2023, email and the attached draft statement, Chair Vassar denied having previously seen either document—despite previously asserting that she had seen a Board statement the morning of February 9, 2023. Chair Vassar also stated that she could not recall discussing the draft with outside counsel for the Board as the email suggested had in fact happened.

The investigation did not identify any evidence that anyone other than Chair Vassar received the draft statement or that anyone other than Chair Vassar communicated with outside counsel for the Board regarding a draft statement by the Board of Trustees. Although the email is not definitive proof that Chair Vassar drafted or directed the outside counsel for the Board to draft the Board statement, in light of Chair Vassar’s wavering recollection and a lack of evidence to the contrary, Miller & Chevalier concludes the email should be taken at face value.

At 4:00pm on February 8, 2023, the Board of Trustees met with Interim President Woodruff, three MSU administrators, and the General Counsel to discuss [REDACTED]. [REDACTED] The General Counsel stated that, in that meeting, the Board may have also discussed [REDACTED]. [REDACTED]. However, neither the General Counsel nor Trustee Kelly recall the Board of Trustees authorizing actual negotiations or discussions of the fact or substance of a draft Board statement.

At 8:27pm on February 8, 2023, the General Counsel received an Outlook invitation from outside counsel for the Board for a Zoom meeting scheduled for 8:30pm—only minutes later (the meeting is referred to by Interviewees as the “all-hands meeting”). The Outlook invitation included “Meeting” in the subject line and lists outside counsel for the Board, Chair Vassar, and Trustee Kelly as attendees. Trustee Kelly recalled receiving an Outlook invitation close to the meeting start time, however, a review of relevant data could not establish the precise time that he received the invitation. As noted, Chair Vassar did not provide her mobile device for review and Miller & Chevalier was unable to determine when she received an invitation to the meeting. Both Trustee Kelly and the MSU General Counsel told Miller & Chevalier that they did not know the purpose of the meeting prior to joining the Zoom call. When they joined, Dr. Gupta and his counsel were also present on Zoom, as was Chair Vassar and outside counsel for the Board.

At 8:27pm, outside counsel for the Board also emailed Chair Vassar, Trustee Kelly, and the General Counsel a draft Board statement purporting to be from the Board: “Attached please find the draft statement. We will see you in a few minutes and can put on the screen to discuss.” The General

Counsel stated that this was the first time he had seen a draft statement.⁴² The General Counsel also recalled that outside counsel for the Board shared the 8:27pm version of the purported Board of Trustees statement on the screen during the meeting, thus providing the text to Dr. Gupta and his counsel. Trustee Kelly recalled receiving the email from outside counsel for the Board but did not recall whether he opened the draft statement before the meeting or after, nor did he recall whether the statement was shared on screen during the meeting.⁴³ Both the General Counsel and Trustee Kelly told Miller & Chevalier that prior to the 8:30pm Zoom meeting, they did not have any contact with outside counsel for the Board regarding a Board statement.⁴⁴

A comparison between the February 7, 2023, version of the draft statement and the version sent to the General Counsel at 8:27pm on February 8, 2023, reveals material differences between the two statements, suggesting that a discussion of its contents took place in the intervening time. In Chair Vassar's third investigation interview, when asked if she contributed to the changes between the versions of the statement, Chair Vassar responded "[a]nything is possible," and then, "I don't remember any of it" and finally stated that revisions to the draft were a product of "a group conversation" but did not provide additional details.

On the morning of February 9, 2023, the Board of Trustees conducted a working session during which outside counsel for the Board shared the draft Board statement. All Trustees, apart from Chair Vassar and Trustee Kelly, recalled to Miller & Chevalier that the meeting was the first time they learned of the draft Board statement and that it had already been shared with Dr. Gupta and his counsel. The General Counsel stated that the reaction from the Trustees confirmed to him that the full Board had been unaware of the prior evening's "all-hands meeting" or that Chair Vassar had met with Dr. Gupta and his counsel. The General Counsel then provided an update of the meeting and shared that Dr. Gupta and his counsel had been presented with a draft of the Board statement. Trustees uniformly recalled being surprised and upset to learn of the meeting and that the statement was shared without consultation with and authorization from the entire Board.⁴⁵ Trustees also recalled that Chair Vassar

⁴² At 8:48 pm, the General Counsel sent an email to external counsel, providing his "quick thoughts" on the language of the draft statement.

⁴³ Trustee Kelly recalled that the all-hands meeting occurred during or immediately following a Board of Trustees dinner that had been scheduled ahead of the Board of Trustees' working session on February 9, 2023. Trustee Kelly's account is corroborated by the General Counsel who recalled that during the meeting, he heard someone he recognized as Trustee Scott ask Trustee Kelly with whom he was on the phone. The General Counsel stated that Trustee Kelly did not respond to Trustee Scott. This account confirms the testimony of other Trustees that they were unaware Chair Vassar and Trustee Kelly were meeting with Dr. Gupta and his counsel at the time.

⁴⁴ The investigation found no evidence that Trustee Kelly communicated with external counsel regarding a board statement. However, the investigation did identify one email from external counsel to both Chair Vassar and Trustee Kelly regarding negotiations with Dr. Gupta. The February 6, 2023, email stated, "Please find attached responses to your questions" and provided an analysis of the Board's authority to reinstate an MSU dean as part of a settlement. During his interview, Trustee Kelly had to refresh his recollection of the events surrounding the negotiations on a few occasions. Therefore, the investigation does not find the conflict between Trustee Kelly's statement and this lone email undermines their credibility. Instead, Miller & Chevalier consider it to be a failure to recollect a single email several months old.

⁴⁵ These accounts are corroborated through a transmittal email sent from the General Counsel to Dr. Gupta's counsel at 6:19am on February 9, 2023, attaching the draft statement and stating, "Please be advised that the draft statement still needs to be reviewed by the full Board." The General Counsel could not recall with specificity why he was the one to send the email to Dr. Gupta, but surmises that it was because he had provided comments

continued on next page

claimed that she also had not seen the draft statement. Trustees remembered that Interim President Woodruff and Interviewee 3⁴⁶ also expressed surprise and displeasure with the substance of the statement and the fact that the statement had been shared with Dr. Gupta and his counsel prior to a full briefing of the findings to the Administration and a review of the statement by the full Board.

The General Counsel stated that, following the working session and at the Board's request, he informed Dr. Gupta and his counsel that the draft Board statement was retracted. In the subsequent days and months, at the direction of the Administration, he resumed settlement negotiations, while continuing to keep the Board of Trustees informed of the negotiation process.

On February 24, 2023, Dr. Gupta filed a lawsuit against Interim President Woodruff, Provost Jeitschko, former President Stanley, and other former and current MSU administrators alleging that they had wrongfully removed him as Dean. On June 12, 2023, Dr. Gupta amended his complaint to include each Trustee. On October 16, 2023, all parties met for a formal mediation to attempt a negotiated resolution. Chair Vassar and Trustee Kelly participated in that mediation and the full Board was informed of its progress and outcome.

Analysis

Based on the factual findings set forth above, Miller & Chevalier concludes: (1) that Chair Vassar participated in at least one settlement negotiation with Dr. Gupta and his counsel in February 2023; (2) that Chair Vassar participated in that negotiation without the knowledge of the full Board; (3) that, prior to the evening of February 8, 2023, only Chair Vassar engaged with outside counsel for the Board regarding a proposed Board statement to be presented to Dr. Gupta as part of settlement discussions; and (4) that Trustee Kelly and the General Counsel participated in a Zoom meeting on February 8, 2023, with Dr. Gupta and his counsel, but had no advance knowledge of the specific issues to be discussed on that call. While Chair Vassar initially provided a compelling alternative explanation to Trustee Scott's allegations, when confronted with contrary evidence, including contemporaneous emails and documentation, she equivocated in her responses, rendering her statements unreliable. Thus, viewed collectively, the evidence supports the conclusion that Chair Vassar attempted to either overtake the negotiations process, or inject herself into the negotiations and introduce a board statement that would impact negotiations without properly coordinating with the General Counsel, including consulting with outside counsel for the Board on matters already under the General Counsel's purview.⁴⁷

The Trustee Policy related to Settlement of Claims and Litigation grants the Board of Trustees authority to authorize negotiated settlements in excess of \$750,000.⁴⁸ Approval of settlements below

to the version he received from external counsel at 8:27pm. The General Counsel added the language regarding the need for full Board review based on his impression from the 8:30pm call that the Board had not been made aware of the draft statement.

⁴⁶ As noted in the Executive Summary, the report does not identify some people by name, position, or gender-specific pronouns, because they fear retaliation and Miller & Chevalier found these fears to be reasonable.

⁴⁷ Several Interviewees noted that they heard about direct communications between Chair Vassar and Dr. Gupta during the negotiations process. Miller & Chevalier did not identify independent evidence to corroborate those claims.

⁴⁸ Bd. of Trs., *BOT 606: Settlement of Claims and Litigation*, MSU (June 26, 2020), <https://trustees.msu.edu/bylaws-ordinances-policies/policies/02-07-03.html> ("a settlement of any claim or litigation for more than \$750,000 shall be tentative, subject to a report to and the consent of the Board of Trustees").

\$750,000 rests with the Administration.⁴⁹ The policy does not, however, grant the Board authority to participate in settlement negotiations. Here, although settlements offered by Dr. Gupta’s counsel were, at times, in excess of the \$750,000 threshold, there is no evidence that the Administration entertained those offers. Even if it had, at most, that would have triggered the Administration’s obligation to seek Board approval of any final settlement exceeding \$750,000; it did not trigger Board authority to insert itself in the negotiations themselves. Likewise, any other settlement actions considered during negotiations, such as reinstatement to the position of Dean, lie with the Administration and only trigger Board approval in certain circumstances.⁵⁰ Notably, the Board of Trustees does have approval to appoint a Dean, but that was not the case here.⁵¹ Thus, with respect to any potential action, again, at most, the Board’s role would be to approve any final recommendation from the Administration.

Miller & Chevalier concludes that settling Dr. Gupta’s claims against the University was a responsibility reserved for the Administration. Chair Vassar’s actions interfered with that responsibility and exceeded the scope of her authority. Specifically, Chair Vassar’s actions violated Standard 7 of the Code of Ethics obligations that the Board “avoid involvement in administrative matters not subject to the direct authority of the Board” and Standard 9 that requires the Board to “communicate through the President, Secretary of the Board of Trustees, or other administrator designated by the President when conducting official University business.”⁵² If Chair Vassar and the Board of Trustees had concerns regarding the negotiations—consistent with governance principles and the Trustee Bylaws’ mandate that the Board hold the Administration “accountable”—they could have engaged directly with the Administration on the status and substance of the negotiations to offer more direct oversight of the process and outcome.

For a complete analysis, Miller & Chevalier considered whether Article 8 of the Trustee Bylaws could grant Chair Vassar (and the Board of Trustees generally) the authority to commence parallel negotiations with Dr. Gupta. Article 8 provides, “Nothing in these bylaws, or regulations issued pursuant thereto, shall prevent the [Board of Trustees] taking prompt action on urgent financial and personnel matters necessary to the best interests of the University.”⁵³ The Bylaws do not define “urgent financial and personnel matters,” or “urgent financial” issues, or “financial exigency” as it is referred to in the Office of General Counsel Trustee Orientation Memo. However, the term “financial exigency” is commonly understood to mean an “imminent financial crisis which threatens the survival of the institution as a whole.”⁵⁴ Here, the issues under negotiation between the University and Dr. Gupta clearly did not rise to the level of a “financial exigency” or “urgent financial and personnel matter.” Even

⁴⁹ *Id.*

⁵⁰ Hum. Res. Adm’rs & Supervisors, *Executive Management – Principles and Procedures for Establishing Positions & Titles*, MSU, <https://hr.msu.edu/ua/hiring/faculty-academic-staff/exec-mgt-principles.html> (last visited Feb. 25, 2024); Hum. Res. Adm’rs & Supervisors, *Executive Management Principles – Appendix I*, MSU, <https://hr.msu.edu/ua/hiring/faculty-academic-staff/exec-mgt-principles-app1.html> (last visited Feb. 25, 2024); Hum. Res. Adm’rs & Supervisors, *Executive Management Principles – Appendix III*, MSU, <https://hr.msu.edu/ua/hiring/faculty-academic-staff/exec-mgt-principles-app3.html> (last visited Feb. 25, 2024).

⁵¹ *Executive Management Principles – Appendix III*, *supra* note 50.

⁵² Code of Ethics ¶¶ 7, 9.

⁵³ Bd. of Trs., *Bylaws-Article 8: Relation of Board and the University Faculty, Staff, and Employees*, MSU, <https://trustees.msu.edu/bylaws-ordinances-policies/bylaws/article-8.html> (last visited Feb. 23, 2024).

⁵⁴ William J. Woodward et al, *Financial Exigency, Academic Governance, and Related Matters*, American Association of University Professors (Apr. 2004), <https://www.aaup.org/report/financial-exigency-academic-governance-and-related-matters>.

if they did, there is no evidence that the Board perceived settlement with Dr. Gupta to be a matter of such urgency as to warrant overtaking the efforts being made by the Administration. Indeed, email documentation between February 1, 2023, and February 6, 2023, does not show a sudden shift—after months of ongoing negotiations between the Administration and Dr. Gupta—in the Board’s view of the negotiations. Therefore, Article 8 does not alter the conclusion that Chair Vassar acted outside the scope of her authority, in violation of several relevant standards.

2. Allegation that Chair Vassar Unilaterally Released the Quinn Emanuel Report

Trustee Scott alleges that Chair Vassar unilaterally released the Quinn Emanuel Report (“the QE Report”) that investigated Dr. Gupta’s resignation and that she did so against the advice of counsel and without Board of Trustee authority. Trustee Scott asserts that these actions violate two provisions of the Code of Ethics:

- ▶ Standard 5, or the requirement that Trustees “exercise responsible stewardship, uphold [their] fiduciary duties to the University and the State of Michigan, and ensure necessary and proper controls safeguarding public resources.”⁵⁵
- ▶ Standard 6, or the obligation to “not disclose nonpublic information, including privileged attorney/client communications, without proper authorization.”⁵⁶

Chair Vassar has admitted to releasing the QE Report but has explained that she did so only after “after lengthy discussions” in which “a majority of the Board voted to release the findings of the [QE] Report in the interest of transparency and accountability and affirmed that decision just before it was released.” Based on interviews and email correspondence, Miller & Chevalier finds that the release of the QE Report does not constitute a breach of the Code of Ethics.

Summary of Factual Findings

The material facts underpinning Trustee Scott’s allegation are largely undisputed. Chair Vassar acknowledges that she personally instructed MSU University Communications (“UComms”) personnel to publish the QE Report on March 31, 2023, and acknowledges doing so against the advice of both MSU’s General Counsel and outside counsel for the Board.⁵⁷ Chair Vassar explained that she took that legal advice into consideration, weighed the risks outlined by counsel against the need for transparency, and determined that the benefit of releasing the QE Report to the public outweighed those risks. When

⁵⁵ Code of Ethics ¶ 5.

⁵⁶ *Id.* ¶ 6.

⁵⁷ On February 22, 2023, external counsel emailed a letter to Chair Vassar and Trustee Kelly explaining the legal risks associated with the Board’s vote to authorize the release of the Report. Subsequent email correspondence reflects that the letter was shared with the entire Board. On March 3, 2023, the General Counsel emailed the Board to also warn of the risks associated with release of the Report and counseled against doing so “at this time,” especially in light of Dr. Gupta’s February 24, 2023, lawsuit against members of the MSU Administration. And on the day of the Report’s release, March 31, 2023, at 5:08 pm, external counsel provided two letters to the entire Board. The first, dated March 20, 2023, reiterated and elaborated on the legal risks previously communicated. The second, dated March 31, 2023, evaluated the Board’s responsibilities under the Code of Ethics with respect to the public release of the Report, but did not make a final determination on whether the release of the Report would violate the Code.

asked if that risk-benefit analysis considered the University's best interest, Chair Vassar confirmed it had and noted that she viewed transparency as fundamental to her fiduciary duty as a Trustee.

Following or not following the advice of counsel is not a violation of any University policy. Therefore, our analysis will focus on facts germane to an assessment of whether Chair Vassar's actions constitute a breach of the Code of Ethics. Fundamental to that analysis is the fact that on February 10, 2023, the Board of Trustees voted unanimously to "releas[e] a report from Quinn Emanuel . . . upon the conclusion of Quinn Emanuel's independent review."⁵⁸ In her interviews with Miller & Chevalier, Chair Vassar credibly stated that she considered that vote to grant her the authority to release the QE Report.

Chair Vassar explained that after legal counsel advised against release of the QE Report, only three Trustees expressed concern or objection to proceeding with release. The remaining five Trustees, including Chair Vassar, continued to support its release. Email communication supports Chair Vassar's understanding.

In email correspondence reviewed by Miller & Chevalier, on March 24, 2023, two Trustees objected to the release of the QE Report based on legal counsel's advice and one Trustee suggested that the Board consider releasing the QE Report in an alternative format. None of the remaining Trustees expressed concern with releasing the QE Report, and one Trustee affirmatively expressed support for release. Therefore, as of March 27, 2023, at least five Trustees, constituting a majority of the Board, supported the release of the QE Report. During interviews with Miller & Chevalier, each of the five Trustees reiterated their support.

As a separate but related issue, during the investigation, Interviewee 2 raised concerns regarding a potential leak of the QE Report before it was released by UComms. According to the Interviewee, the QE Report and an accompanying Board statement were published in The Detroit News a few minutes before those documents were published on the UComms website.⁵⁹

Independent evidence demonstrates the following timeline. A March 31, 2023, email sent at 9:00pm reflects that outside counsel for the Board provided the final QE Report directly to Chair Vassar, with no other recipients. Subsequent emails, corroborated by interview accounts, show that Chair Vassar then provided the QE Report to UComms. Email correspondence from earlier on March 31, 2023, also demonstrates that a Board statement to accompany the QE Report's release—a statement that UComms prepared, and the entire Board reviewed in the days prior—was finalized by UComms personnel with Chair Vassar's input. At 11:09pm, The Detroit News published an article with a detailed account of the QE Report's findings. At 11:13pm, the QE Report and Board statement were released to the media through the University's media distribution platform, CISION. At 11:38pm, the QE Report and statement went live on the MSU Board of Trustees website and were accessible to the public.

Since The Detroit News published an article about the QE report before it was released officially by MSU, it is fair to assume that it had been leaked in advance. In recounting their concerns of the leak, Interviewee 2 stated that only four individuals—three MSU employees and Chair Vassar—had access to

⁵⁸ Bd. of Trs., *Minutes of the Meeting 9*, MSU (Feb. 10, 2023), <https://trustees.msu.edu/meetings/documents/2023/February%202023%20Meeting%20Minutes%20Accessible.pdf> (emphasis added).

⁵⁹ Kim Kozlowski & Beth LeBlanc, *Gupta violated MSU policy, but discipline against him was 'disproportionate,' report says*, The Detroit News (Mar. 31, 2023, 11:09 PM), <https://www.detroitnews.com/story/news/local/michigan/2023/03/31/michigan-state-university-quinn-emanuel-report-dean-sanjay-gupta/70064089007/>.

the final version of the Board statement that The Detroit News (and UComms) subsequently published. Independent evidence confirms that only four individuals were parties to the email correspondence containing the final version of the statement. Interviewee 2 also recounted a conversation the day after the QE Report's release in which they informed Chair Vassar that The Detroit News had published the story first. They characterized Chair Vassar as acting "overly surprised" and defensive and stated that she "doth protest too much." The Interviewee also noted that they found it peculiar that Chair Vassar did not ask follow-up questions, and she did not otherwise direct the Interviewee to find the source of the leak or follow up with The Detroit News. In her interview with Miller & Chevalier, Chair Vassar denied any involvement, accused Interviewee 2 of being the source of the leak, and voiced a general distrust of UComms.

Analysis

Miller & Chevalier did not substantiate that Chair Vassar's release of the QE Report violated the Code of Ethics. The duties embodied in the Code—of loyalty, good faith, and care—in this instance, did not obligate Chair Vassar to follow the advice of counsel. Instead, they obligated Chair Vassar and all Trustees to fully consider that advice, alongside any other factors impacting the best interest of MSU. Here, interview accounts and emails reflect that the Trustees collectively and individually, including Chair Vassar, evaluated the legal risks against the benefits of transparency and that at least five Trustees considered litigation risks to be outweighed by the benefits of transparency.⁶⁰ This evidence, coupled with the Board's unanimous vote to release the QE Report, supports the finding that Chair Vassar did not violate her fiduciary duties when she released it against the advice of legal counsel. Likewise, the evidence supports the conclusion that Chair Vassar had proper authorization to disclose the final QE Report, so she did not violate her obligation to "not disclose nonpublic information, including privileged attorney/client communications, without proper authorization."⁶¹

Miller & Chevalier did not identify sufficient evidence to confirm or refute the concern that Chair Vassar leaked the QE Report and Board statement to The Detroit News. As previously noted, Chair Vassar declined to cooperate in the cell phone review which may have provided the ability to address factual gaps in Miller & Chevalier's investigation into the alleged leak.

3. Allegation that Chair Vassar Requested that the Michigan Department of Attorney General Seek Release of Documents from the Larry Nassar Matter

Trustee Scott alleges that Chair Vassar exceeded the scope of her authority by contacting the Michigan Department of Attorney General to ask for a letter requesting that the Board of Trustees waive the University's privilege protection over documents from the Larry Nassar matter. Specifically, Trustee Scott alleges that: (1) "[i]n April 2023, [Chair] Vassar contacted the Michigan [Department of Attorney General] regarding documents related to the Larry Nassar case;" (2) that this contact was "without prior discussion or authority to do so from [MSU's] administration or the [Board of Trustees]," and that (3) Chair Vassar requested "the Attorney General send a letter to the [Board of Trustees] asking for the waiver of attorney client [sic] privilege related to those documents."

⁶⁰ Subsequent to the QE Report's release, Dr. Gupta filed an amended complaint against the University, including the Board of Trustees as named defendants and relying, in part, on the release of the QE Report and its content to support his complaint.

⁶¹ Code of Ethics ¶ 6.

Previously, in June 2018, the then-Michigan Attorney General, Bill Schuette, served a search warrant on MSU seeking the release of all documents relating to the Larry Nassar case and other Title IX matters as part of a government investigation.⁶² In response to that search warrant, MSU produced approximately 120,000 documents, but withheld approximately 4,000 documents on the basis of attorney-client privilege (the latter are referred to as the “Nassar Documents”).⁶³ On February 24, 2021, the Department of Attorney General renewed its request for the release of the Nassar Documents, which the Board again refused to produce on the same grounds.⁶⁴ As a result, on March 26, 2021, the Department of Attorney General announced an end to its investigation into the Larry Nassar matter, stating that “[t]he University’s refusal to voluntarily provide [the Nassar Documents] closes the last door available to finish our investigation.”⁶⁵

Two years later—on April 14, 2023, Attorney General Nessel sent a letter to the Board of Trustees renewing the Department of Attorney General’s request for the Nassar Documents, asking the Board of Trustees to “vote to release” the remaining documents and “fulfill the [Board’s] stated pledge to continue cooperating” with the Department of Attorney General.

In her interviews with Miller & Chevalier, Chair Vassar acknowledged speaking with the Department of Attorney General about the Nassar Documents and stated that she only communicated “the appetite of the majority of the Board to produce all the documents to the Department of Attorney General.” However, Chair Vassar denies initiating this communication, suggesting that either the Department of Attorney General or a third party interested in the matter (“Third Party 1”) must have done so. However, in public comments, Attorney General Nessel made clear that Chair Vassar was the one who made the request.⁶⁶

Summary of Factual Findings

The investigation substantiated that Chair Vassar participated in two virtual meetings with the Department of Attorney General, one in February 2023 and one in April 2023, regarding the release of the Nassar Documents.

Document review did not identify any email communications related to the meetings. In her interviews with Miller & Chevalier, Chair Vassar vacillated in her explanation about these meetings. However, other interviews provide evidence that Chair Vassar attended a Zoom meeting in February 2023 with a member of the Department of Attorney General and Third Party 1. While Chair Vassar was

⁶² See ARC Comm., *Resolution of the Board of Trustees of Michigan State University authorizing the examination and release of certain documents*, MSU (Dec. 15, 2023), <https://trustees.msu.edu/meetings/documents/2023/ARC3-Documents%20Release%20Resolution%20STAMP.pdf>.

⁶³ See *id.*

⁶⁴ See Letter from Brian T. Quinn, MSU Vice President of Legal Affs. And Gen. Couns., to Dana Nessel, Att’y Gen. (Mar. 26, 2021), <https://msu.edu/ourcommitment/assets/documents/2021-03-26-letter-to-ag.pdf>.

⁶⁵ See Press Release, Michigan Department of Attorney General, AG Nessel Forced to Close MSU Investigation Following Trustees’ Refusal to Waive Privilege (Mar. 26, 2021), <https://www.michigan.gov/ag/news/press-releases/2021/03/26/ag-nessel-forced-to-close-msu-investigation-following-trustees-refusal-to-waive-privilege>

⁶⁶ See Alex Walters, *Nessel: MSU Board Chair orchestrated plan to release Nassar Documents, but didn’t follow through*, The State News (Apr. 21, 2023), <https://statenews.com/article/2023/04/nessel-msu-board-chair-orchestrated-plan-to-release-nassar-documents-but-didnt-follow-through>

unclear about the specific date of this meeting, she told Miller & Chevalier that she attended this meeting at the invitation of Third Party 1.

Chair Vassar denied that she requested the Department of Attorney General to issue a letter seeking MSU's waiver of attorney-client privilege during the February 2023 Zoom meeting. Chair Vassar stated that around February 2023 there had been informal discussions amongst the Board of Trustees, in which at least five Trustees had communicated to her their interest in releasing the Nassar Documents. She added that as such, when Third Party 1 reached out to her with a request to meet with the Department of Attorney General, she attended the meeting and only communicated the Board's interest in releasing the Nassar Documents.

Interviews with others confirm that on April 3, 2023, Chair Vassar met with two members of MSU's Administration, including the General Counsel, and informed them that she wanted to add the release of the Nassar Documents to the Board's meeting agenda. According to the General Counsel in his interview with Miller & Chevalier, Chair Vassar represented to him that the Department of Attorney General had reached out to her in February 2023, and as a result, she wanted to add the release of the Nassar Documents to the agenda for the following public Board meeting scheduled for April 21, 2023. The General Counsel reminded Chair Vassar of MSU's position that it did not want to waive privilege protection over the Nassar Documents, noting that the matter had been closed by the Department of Attorney General since 2021. According to his account, the General Counsel also noted that ongoing litigation against MSU related to Nassar necessitated preserving the University's attorney-client privilege over the documents. The General Counsel reported that he then commented to Chair Vassar that if the Department of Attorney General was requesting documents from the Board, that request should be in writing. According to the General Counsel, Chair Vassar then intimated that she would obtain such a letter.

Subsequently, on April 10, 2023, the Board held its agenda review meeting ahead of the April 21, 2023, public Board meeting. Interview accounts confirm that several members of MSU's Administration, including the General Counsel, the Interim President, and Trustee Kelly, attended this agenda review meeting. According to Interviewees, Chair Vassar indicated at this meeting that the Board would receive a letter from the Department of Attorney General renewing its request for the Nassar Documents. An interview account indicates that meeting attendees concluded that the release of the Nassar Documents would be added to the agenda for the April 21, 2023, public Board meeting if the letter from the Department of Attorney General arrived before the publication of the public Board meeting agenda.

In one of her interviews, Chair Vassar explained that she knew a letter from the Department of Attorney General was forthcoming because Third Party 1 confirmed to her that the Department of Attorney General was preparing a letter to renew its request for the release of the Nassar Documents. Chair Vassar also confirmed that sometime prior to the April 10, 2023, agenda setting meeting, she had participated in "a three-way conference call" with a member of the Attorney General's Office and Third Party 1, at which the release of the Nassar Documents was also discussed, and that the member of the Department of Attorney General confirmed that it was preparing a letter to the Board.

On April 14, 2023, the Board published the agenda for its public Board meeting scheduled for April 21, 2023. Later that same day, the Department of Attorney General sent a letter to the Board renewing its 2021 request for the release of the Nassar Documents by April 28, 2023. In her interviews with Miller & Chevalier, Chair Vassar indicated that during the week of April 10, 2023, she called every Board member except for MSU Trustee Dianne Byrum ("Trustee Byrum"), to discuss the release of the

Nassar Documents. However, according to several Trustee interviews, the letter from the Attorney General was the first time they were made aware of the Department of Attorney General's intent to renew its request for these documents.

Following its receipt of the Attorney General's letter, the Board held meetings on April 17 and April 20, 2023, to discuss the possibility of adding the release of the Nassar Documents to the Board's published agenda. Ultimately, the Board did not favor adding this item to the agenda. Accordingly, at the April 21, 2023, public Board meeting, the Board did not vote on the release of the Nassar Documents. In her remarks at that meeting, Chair Vassar announced that the "[U]niversity would not waive attorney client privilege and would further withhold the [Nassar Documents.]"⁶⁷

Also on April 21, 2023, the Attorney General reacted publicly to the Board's decision to not vote on the release of the Nassar Documents at the public Board meeting. In comments to The State News, Attorney General Nessel stated that "[Chair Vassar] asked her to send the recent letter re-affirming the demand for the documents' release in hopes of reopening the investigation, and that it would be voted on at the meeting Friday." Attorney General Nessel added "she has 'literally no idea' why the board changed its mind," and that "[The Board] requested this letter and said they needed it by last Friday in order to be able to conduct a vote today, . . . [t]hen at the meeting today there's not even a vote." Attorney General Nessel further suggested that the letter renewing her demand for the release of the Nassar Documents "was [Chair Vassar's] idea to begin with."⁶⁸

Analysis

Miller & Chevalier's investigation identified evidence corroborating the allegation that Chair Vassar independently met with the Department of Attorney General and that these interactions resulted in a request for the Board to waive attorney-client privilege over the Nassar Documents. There is not sufficient evidence to corroborate the allegation that Chair Vassar herself initiated contact with the Department of Attorney General, but Interviewee accounts and circumstantial evidence, coupled with Attorney General Nessel's public comments, affirm that Chair Vassar's request prompted the Attorney General's renewed demand for the Nassar Documents.

The investigation substantiates that Chair Vassar did not have the consensus of the Trustees prior to her conversations with the Department of Attorney General in February 2023 and early April 2023. Several Trustees stated that while there were informal discussions about releasing the Nassar Documents, the Board had not yet reached a final decision on the issue at the time of Chair Vassar's conversations with the Department of Attorney General. In an interview with Miller & Chevalier, Trustee Denno stated that prior to engaging with the Department of Attorney General, Chair Vassar asked the Board whether she could talk to the Department of Attorney General about the Nassar Documents and that the Board said "yes." No other Trustee had this understanding.

The investigation also substantiates that Chair Vassar was the only Trustee in attendance at both the February and April conversations with the Department of Attorney General. While some Trustees, including Trustee Scott, stated that they maintained personal relationships with members of the Department of Attorney General, the same Trustees confirmed that the release of the Nassar Documents was not a topic of discussion with their contacts there. In her interview with Miller &

⁶⁷ See *id.*

⁶⁸ See *id.*

Chevalier, Trustee Scott acknowledged contacting the Attorney General to inquire about the April 14, 2023, letter—after the fact and disclosing that outreach to the Board of Trustees.

As such, the evidence demonstrates that Chair Vassar’s conversations with the Department of Attorney General were a factor in triggering the Department of Attorney General’s renewed request for the Board to waive privilege.

Miller & Chevalier does not credit Chair Vassar’s statement that she did not request that the Attorney General send a letter to the Board. During her interview, Chair Vassar vacillated on her recollection of the facts and the timeline of events. In contrast, the Attorney General clearly and publicly stated that Chair Vassar was the one who initiated the renewed request for the release of the Nassar Documents.

As the spokesperson for the Board, the Chair’s statements must reflect the Board’s decisions. Article 13 of the Bylaws states that “[t]he authority of the Trustees is conferred upon them as a Board, and they can bind the corporation and the University only by acting together as a Board.” Article 13 also states that “no individual member shall commit the board to any policy, declaration, or action without prior approval of the Board.”⁶⁹ Accordingly, decisions regarding changing the Board’s public position on a subject as sensitive as the release of the Nassar Documents, an issue that implicates the entire Board, were required to have been discussed and decided by the Board as a whole.

Furthermore, Standard 7 of the Code of Ethics requires the Board to “avoid involvement in administrative matters not subject to the direct authority of the Board.”⁷⁰ Though the decision to waive attorney-client privilege lies with the Board, negotiations and discussions with the Department of Attorney General is a matter that properly rests within the scope of authority of the Office of the General Counsel, an administrative function at MSU. Considering the impact that Chair Vassar’s engagement with the Department of Attorney General has had on the interests and concerns of other Board members and the University, Chair Vassar’s unilateral intervention in discussions between MSU and the Department of Attorney General exceeded her authority as the Chair and spokesperson of the Board and constitutes a breach of Article 13 of the Bylaws and Standard 7 of the Code of Ethics.

4. Allegation that Chair Vassar Interfered with SRMC Report Findings

Following the tragic events of February 13, 2023, MSU commissioned SRMC to conduct an after-action review of the University’s response. SRMC prepared a report of its findings and conclusions that was first shared with the Board of Trustees at a preliminary review meeting (“Preliminary Review”). Trustee Scott alleges that when the Board attended that Preliminary Review, Chair Vassar “inappropriately suggested to the firm consultants during their briefing [] that they might consider revising the finding[s]”

The findings to which Trustee Scott refers in her October 20, 2023, letter relate to SRMC’s observations that certain Trustees were involved “beyond the customary role and expectations of a governance board during an emergency.” In her letter, Trustee Scott also alleges that in the aftermath of the February 13, 2023, shooting, Chair Vassar was one of these people and overstepped her role as Chair and Trustee.

⁶⁹ Bylaws-Article 13, *supra* note 34.

⁷⁰ Code of Ethics ¶ 7.

Summary of Factual Findings

SRMC assessed MSU's emergency protocols and response to the February 13, 2023, shooting. On September 29, 2023, SRMC presented its Preliminary Review findings to the Board of Trustees. During this Preliminary Review, SRMC commented on the conduct of some Trustees in the aftermath of the shooting and concluded, based on multiple interviews, that "the Board of Trustees members wanted to help but became involved in the incident beyond the customary role and expectations of a governance board during an emergency."⁷¹ Interviewees confirm that in response to this assessment, some Trustees questioned SRMC's findings regarding the Board's conduct. Subsequently, SRMC revised certain aspects of their report discussed at the Preliminary Review.

Several of the Interviewees present at the Preliminary Review recalled that while Chair Vassar asked questions about the findings, she did not specifically request that the Preliminary Review findings be revised. These Interviewees uniformly recalled that Trustee Denno, rather than Chair Vassar, led the questioning of the SRMC consultants. In an interview with Miller & Chevalier, Trustee Denno confirmed that he led the critique of the Preliminary Review findings and denied Chair Vassar's involvement, stating "absolutely not. I was the one pushing back"

While some Interviewees agreed with the substance of Trustee Denno's questions during the Preliminary Review, several Trustees consistently described the manner in which Trustee Denno asked the questions as inappropriate, with some describing his conduct as "aggressive" and "bullying." One Interviewee recalled that Trustee Denno took exception to certain parts of the report, including SRMC's findings that Trustees should not have been present at Sparrow Hospital following the shooting. The same Interviewee also recalled that Trustee Denno "insult[ed]" the consultants in the presence of the rest of the Trustees. According to other interview accounts, Trustee Denno's conduct was described as "very uncomfortable," "aggressive," "[h]e raised his voice," and "was very demonstrative with how he felt." He "took issue with the critique of the Board," "asked for the consultants to change the report in many ways," "was very rude to the [Consultants]," and was "bullying."

Interviewees recall that Chair Vassar was also critical of the report, specifically regarding SRMC's fact-finding process. However, in contrast to Trustee Denno's conduct, most Interviewees did not recall Chair Vassar inappropriately critiquing SRMC's report at the Preliminary Review. One Interviewee recalled Chair Vassar suggesting to the consultants that they "engage in additional outreach" in connection with their report findings. Other Interviewees recalled Chair Vassar suggesting that the consultants "meet with Trustee Denno and talk through some of the issues he has with the report." Accordingly, while Chair Vassar did take part in reviewing the SRMC report, most Interviewees did not view her critique as an affirmative request for the consultants to modify the Preliminary Review findings. Additionally, Miller & Chevalier did not identify evidence indicating that any changes to the SRMC report were due to Chair Vassar's suggestions.

In her letter, Trustee Scott also alleges that in the aftermath of February 13, 2023, Chair Vassar overstepped her role as Chair and Trustee in her response to the emergency. Other Interviewees also raised concerns to Miller & Chevalier regarding some of the Trustees' conduct following the shooting. As detailed in the SRMC report, MSU had developed protocols to help the Administration navigate

⁷¹ See SRMC, *After-Action Review of the Response to A Mass Shooting on the Campus*, MSU (Oct. 2023), https://msutoday.msu.edu/-/media/assets/msutoday/docs/independent-review-of-feb-13-response-released/msu_after-action_report.pdf?utm_source=community-letter&utm_medium=email&utm_campaign=students.

emergencies, such as this tragic event, but these protocols do not address Board involvement. Understandably, the Board sought to provide assistance in the wake of the events of February 13, 2023, and, absent specific guidance, some actions taken by Trustees purportedly interfered with the Administration's ability to respond effectively to the crisis.

Miller & Chevalier cannot put itself in the shoes of any individual reacting to the events of February 13, 2023. The loss and trauma suffered by the MSU community is immeasurable and permeates the community still. Miller & Chevalier has no reason to question that all Trustees reacted from a place of concern and desire to help. Nevertheless, some Trustee actions were perceived and reported to Miller & Chevalier as being disruptive or overstepping. For example, several Interviewees reported that Chair Vassar inserted herself in phone calls between the Administration and grieving families. In addition, several Trustees visited Sparrow Hospital following the shooting and asked to enter areas reserved for families, causing the hospital to specifically request that "future visits associated with MSU to the hospital to visit students or families should cease." Finally, Chair Vassar announced that the University would confer a posthumous degree without consulting the Administration. Interview accounts indicate that at the time Chair Vassar announced an award to one deceased student, the University was still in process of reviewing its policy on awarding posthumous degrees and was engaging with the families of deceased students to determine their wishes and ensure that any decision was consistently applied.

Analysis

The investigation did not substantiate the allegation that Chair Vassar inappropriately suggested that SRMC revise its findings. While the allegation against Chair Vassar is not substantiated, Trustee Denno's conduct at the Preliminary Review raises concern. Standard 8 of the Code of Ethics states that Trustees "will support open communication, transparency, and the free expression of ideas and will not condone any form of deceit, incivility, intimidation, silencing, or retaliation."⁷² As several Interviewees recounted, Trustee Denno's conduct at the Preliminary Review is inconsistent with Standard 8 of the Code of Ethics and as such constitutes a breach of the conduct expected of a member of the Board of Trustees.

With respect to the allegations regarding the conduct of Chair Vassar and other Trustees following the February 13, 2023, shooting, it is apparent to Miller & Chevalier that the Trustees, including Chair Vassar, acted with sincere intent to support the MSU community following the tragic events. However, Article 4 of the Bylaws state that the President is the "principal executive officer of the University," and that the President, shall among other things, "exercise such powers as are inherent in the position in promoting, supporting, and protecting the interests of the University and in managing and directing all its affairs."⁷³ Standard 7 of the Code of Ethics also states that the Board will "avoid involvement in administrative matters not subject to the direct authority of the Board."⁷⁴ Crisis management following the tragic events of February 13, 2023, falls within the powers conferred upon the President, and, by extension, the Administration. Therefore, Chair Vassar's specific actions, as detailed above, though well-intended, encroached on an area of responsibility reserved for the Administration.

⁷² Code of Ethics ¶ 8.

⁷³ Bylaws-Article 4, *supra* note 32.

⁷⁴ Code of Ethics ¶ 7.

B. Allegations Related to Chair Vassar’s Relationship with Donors and Third Parties

Trustee Scott’s October 20, 2023, letter made several allegations that involve Chair Vassar’s relationships with donors and third parties, including (1) Chair Vassar’s appearance in an advertisement with former MSU Trustee Brian Mosallam (“former Trustee Mosallam”) and his company, Spartan Wealth Management; and (2) Chair Vassar’s and other current and former Trustees’ use of donors’ private jets.

In addition, during the investigation, some interviewees also discussed other alleged circumstances that relate to Chair Vassar’s relationship with donors, including (a) Chair Vassar’s alleged involvement in trademark discussions with an MSU donor; and (b) Chair Vassar’s alleged involvement in authorizing trademark usage by a third party and donor.

1. Allegation that Chair Vassar’s Appearance in an Advertisement with Former Trustee Brian Mosallam and his Spartan Wealth Management Group Violated Standard 3 of the Code of Ethics

Trustee Scott’s letter alleges that Chair Vassar “authorized her photo with former Trustee Brian Mosallam (“former Trustee Mosallam”) and his Spartan Wealth Management group, to be used in advertising on behalf of his private business.” Trustee Scott claims that Chair Vassar’s appearance in this photo, with its accompanying text, “is not consistent with [the Trustees’] fiduciary responsibilities to the University pursuant to the Board of Trustees Code of Ethics and Conduct, Paragraph 3, which provides in relevant part: ‘We will avoid . . . appearances of impropriety.’” Trustee Scott asserts that the photo appeared to act as an endorsement of Spartan Wealth Management by Chair Vassar.

Chair Vassar explained that she did not see any issue with the advertisement. Rather, she viewed it as similar to other Trustees’ past congratulatory advertisements and public messages.

Summary of Factual Findings

After speaking with relevant personnel and evaluating the advertisements and other congratulatory messages involving other Trustees implicated by this allegation, Miller & Chevalier finds that Chair Vassar’s participation in the advertisement with former Trustee Mosallam, which was sponsored by Spartan Wealth Management and appears to be designed to generate business for it, is inconsistent with, but for the reasons detailed below, does not violate the expectations stated in the Code of Ethics.

Unlike the advertisement in which Chair Vassar appeared, other Trustees’ congratulatory advertisements and messages do not appear to be business-sponsored or intended to create business for third parties, and therefore they do not violate applicable MSU policies.

In August 2023, Chair Vassar appeared in a photo alongside former Trustee Mosallam, a founding partner and current CEO and managing partner of Spartan Wealth Management. Four other members of the Spartan Wealth Management team also appear in the photo. Below the photo, a headline states: “A Spartan’s greatest strength is the warrior standing next to ~~him~~ her.” This is followed by the statement: “Spartan Wealth Management congratulates MSU Board of Trustees Chairwoman Dr. Rema Vassar for her selection as Crain’s Notable Leader in Higher Education. Her leadership is what MSU needs as we usher in the 22nd President in the university’s history. Spartan Wealth Management has over 2 billion reasons to stand with you.” Interviewees recalled the photo appearing in several media

publications, including Crain's Detroit Business ("Crain's"), Lansing State Journal, The Detroit News, and Detroit Free Press. Spartan Wealth Management also shared the photo on LinkedIn.⁷⁵



When asked about the photo, Chair Vassar stated that former Trustee Mosallam nominated her for the Crain's Notable Leaders in Higher Education award,⁷⁶ which she ultimately received, and that the photo was taken to recognize this achievement. According to Chair Vassar, when she won the award, former Trustee Mosallam informed her that Crain's requested that he prepare an advertisement in recognition of the award. Chair Vassar stated that she considered the request to be in line with the common practice to provide an advertisement to celebrate award recipients. Chair Vassar explained that former Trustee Mosallam then organized a photo session, which she attended. Chair Vassar indicated that former Trustee Mosallam has never asked her to do anything for him nor did she receive payment for appearing in the advertisement.

⁷⁵ See Spartan Wealth Management, LinkedIn, https://www.linkedin.com/posts/spartan-wealth-management_congratulations-dr-rem-a-vassar-phd-on-activity-7096928627103072256-Jn3B/ (last visited Feb. 25, 2024).

⁷⁶ *Meet Crain's Notable Leaders in Higher Education*, Crain's (Aug. 14, 2023), <https://www.craindetroit.com/notables/notable-leaders-higher-education-meet-honorees>.

When asked about her relationship with former Trustee Mosallam, Chair Vassar explained that she met him during their time campaigning for positions on MSU’s Board of Trustees. She stated that former Trustee Mosallam has “been nothing but respectful to her.”

Significantly, Chair Vassar told Miller & Chevalier that, prior to publication of the ad, she did not see or approve the text that ultimately accompanied the photo. When the photo was published in August 2023, Chair Vassar recalled that she thought “the ad looked great” and she “didn’t see anything wrong with the ad.” She said that she “saw this ad as harmless” and did not consider the advertisement to be any different from congratulatory messages that had previously been issued to honor other Trustees in similar situations. According to Chair Vassar, she did not know the advertisement would appear outside of Crain’s. Chair Vassar also stated that she was unaware of any Board policies that would have prohibited her from participating in the ad.

After its publication, the advertisement was met with concern from other Trustees. Some of these Trustees recalled thinking the advertisement was “inappropriate,” “improper,” and “shock[ing].” One Trustee found the advertisement to be “a bit much because it was really promoting Brian Mosallam.” Another Trustee noted that former Trustee Mosallam “paid for [the] ad to promote [Chair Vassar], and her award, and his company. No doubt about that.” One Trustee did not have any concerns with the advertisement.

Analysis

Based on interviews with relevant personnel, including Chair Vassar, and a review of the advertisement in question, Miller & Chevalier finds that Chair Vassar’s participation in the advertisement was based on her belief that print congratulatory advertisements were not prohibited by Board policies.

Standard 3 of the Code of Ethics requires Trustees to “avoid conflicts of interest and appearances of impropriety.”⁷⁷ The Trustee Conflict of Interest Policy builds on this requirement by stating, “Trustees will endeavor to remain free from the influence of, or the appearance of, any conflicting interest in fulfilling their Board duties. . . . Trustees will attempt to refrain from accepting duties, incurring obligations, or engaging in activities that would be incompatible with, or in conflict with, their Board duties.”⁷⁸ Further, the Trustee Conflict of Interest Policy impresses upon Trustees to “not use their positions . . . to obtain *or provide* others with a benefit that is inconsistent with the University’s interests.”⁷⁹

Under a strict application of Standard 3, Chair Vassar’s appearance in *an* advertisement following her recognition as one of Crain’s Notable Leaders in Higher Education would be acceptable and is generally standard practice. However, Chair Vassar’s appearance in this specific, business-sponsored advertisement presents concerns, where other advertisements, including those presented to others in similar contexts in the past, would not.

In the case of this advertisement featuring Chair Vassar, Miller & Chevalier finds that whether intentionally or not, former Trustee Mosallam, and Spartan Wealth Management used the opportunity to congratulate Chair Vassar’s award, while also using it to promote their business. On its face, the

⁷⁷ Code of Ethics ¶ 3.

⁷⁸ Trustee Conflict of Interest Policy § II(b)–(c).

⁷⁹ *Id.* § IV (emphasis added).

advertisement communicates a proximity between Chair Vassar, former Trustee Mosallam, and Spartan Wealth Management. The relationship is apparent simply by virtue of the fact that Spartan Wealth Management sponsored the advertisement, and four members of the Spartan Wealth Management team appear prominently in the photo. Further, Chair Vassar’s closeness with former Trustee Mosallam and the business is implied by her leaning towards him and resting her arm on his shoulder while he holds a Spartan helmet. It is foreseeable that an objective viewer would interpret Chair Vassar’s closeness to former Trustee Mosallam and Spartan Wealth Management as an endorsement of them by Chair Vassar. For a business benefiting from the Spartan name, and which one Trustee noted “gets a lot of clients from MSU,” such an endorsement is not insignificant.

Miller & Chevalier finds that is clear evidence of a business intent behind the advertisement. The advertisement capitalizes on the MSU brand and Chair Vassar’s role as Chair of the MSU Board of Trustees. While it may not have been Chair Vassar’s intent, the advertisement was gratuitous and lends her image as Chair to Spartan Wealth Management’s business development efforts. Its last line refers only to Spartan Capital Management and its resources. This is extraneous to any congratulatory message about Chair Vassar—and it is the message left with the reader. Finally, the advertisement was also placed outside of Crain’s, the publication that provided Chair Vassar with the award. By placing the advertisement in The Detroit News, Lansing State Journal, and Detroit Free Press, and by posting it on LinkedIn, that imagery conveying the proximity between Chair Vassar and Spartan Wealth Management was intentionally distributed to a wider audience, including business contacts.

Standard 3 of the Code of Ethics requires Trustees to “avoid . . . appearances of impropriety⁸⁰ and the Trustee Conflict of Interest Policy instructs them to “attempt to refrain from . . . engaging in activities that would be incompatible with, or in conflict with, their Board duties.”⁸¹ Further this Policy dictates that Trustees “not use their positions . . . to obtain *or provide* others with a benefit that is inconsistent with the University’s interests.”⁸²

Miller & Chevalier finds that the elements of the photo set-up at the photo shoot should have prompted a Trustee to question whether the photo, as composed, could raise questions or imply an endorsement by the Trustee or a connection with the third party’s interests. Unfortunately, Chair Vassar did not have these concerns. And without reviewing the advertisement before it was published, the perception may well have been created that she was providing an endorsement. Chair Vassar appears to have relied on her understanding that congratulatory ads were acceptable without exercising caution or oversight. By the time the advertisement was published, any harm from the endorsement implied in it was already done.

The advertisement in which Chair Vassar appeared is very different from other Trustees’ past congratulatory messages and public acknowledgements of their MSU Board positions. Unlike Chair Vassar’s advertisement, the congratulatory advertisement in which Trustee Byrum appeared was not sponsored by a third-party business, it did not appear to endorse any outside parties, and it appeared only in Crain’s.⁸³ Likewise, in the case of Trustee Scott’s award, the congratulatory articles and postings

⁸⁰ Code of Ethics ¶ 3.

⁸¹ Trustee Conflict of Interest Policy § II(c).

⁸² *Id.* § IV (emphasis added).

⁸³ Photo of Trustee Byrum’s Advertisement, Crain’s (Nov. 8, 2021), https://www.millerchevalier.com/sites/default/files/resources/Misc/Report_Byrum-Craine-Ad.pdf.

were not business-sponsored and did not appear to endorse a third party.⁸⁴ This critical difference distinguishes the advertisement in which Chair Vassar appeared from others.

In addition to awards, some Trustees have also acknowledged their positions on the MSU Board of Trustees on their professional profiles, though Miller & Chevalier views this as distinct from engaging in a business-sponsored advertisement from which a third party derives a benefit. Specifically, Trustee Knake Jefferson maintains a personal consulting website, on which there is a hyperlink to and an acknowledgement of her position on the MSU Board of Trustees.⁸⁵ Miller & Chevalier does not view the hyperlink as promotional or endorsing any third party. Rather, the hyperlink simply accompanies biographical information regarding her academic and professional history. Trustee Scott also includes the Board of Trustees role among other career achievements that are listed on her professional website.⁸⁶ Likewise, MSU Trustee Sandy Pierce (“Trustee Pierce”) previously maintained a professional profile hosted on her employer’s website, which identified her role on the MSU Board of Trustees along with her other board experience and professional accomplishments. These types of postings are informational, and Miller & Chevalier does not view them as violating any MSU policy. They are significantly different than the advertisement here.

Nevertheless, Miller & Chevalier credits Chair Vassar statements that she believed she was involved in an activity regularly engaged in by others, and that she did not see her conduct as creating an appearance of impropriety. Further, because she did not recognize the implications of the advertisement as it was being produced and did not know the text of the message included in the ad, we find that she did not *use* her position to provide a benefit. Indeed, she may have been used by others. Thus, we do not find that Chair Vassar’s conduct violated the Code of Ethics or the Trustee Conflict of Interest Policy.

Miller & Chevalier notes that if Chair Vassar had received guidance about what review should be given by Trustees to any use of their name or image, and if she had followed it, a different outcome might have resulted. This is an area where further guidance would be useful for future instances where congratulatory ads are being created.

2. Allegation that Chair Vassar Traveled on an MSU Donor’s Private Jet for University Business

Trustee Scott also alleges that, “[o]n at least two occasions,” Chair Vassar “traveled on university business via [Donor A’s] private jet with Mel Tucker and donors” and specifically points to Chair Vassar’s travel to the “MSU Men’s Basketball game against Rutgers at Madison Square Garden” as an example. Trustee Scott alleges this conduct violates the Code of Ethics Standard 4, under which Trustees “will not accept special benefits or anything of value for [themselves] or others in consideration of performing [their] duties as a Trustee, other than approved University resources and courtesies and the

⁸⁴ See, e.g., Becky Vargo, *Muskegon attorney wins Athena award*, Grand Haven Tribune (Oct. 2, 2019) https://www.grandhaventribune.com/news/local/muskegon-attorney-wins-athena-award/article_cb3118ad-a206-5c83-a05f-ca4439fe2e1d.html.

⁸⁵ The hyperlink is still on the website, however Miller & Chevalier noted that the link no longer appears to be working.

⁸⁶ *Attorneys*, Brianna T. Scott & Associates, PLLC, <https://briannascott.com/attorneys/> (last visited Feb. 25, 2024).

reimbursement of authorized expenses.”⁸⁷ Trustee Scott further alleges that the conduct implicates the Trustee Conflict of Interest Policy.

In her initial public response to Trustee Scott’s allegations on October 23, 2023, Chair Vassar explained the two occasions where she travelled via private plane on MSU-related business. According to Chair Vassar, in the first instance a friend, who is also an MSU donor, invited her to a March 23, 2023, game between MSU and Kansas State University. The second instance was when she “traveled with Trustee Emeritus Melanie Foster’s friend, an MSU donor, five other Trustees, and Coach Izzo to review athletic facilities of three universities.”

Summary of Factual Findings

The investigation corroborates the allegation that Chair Vassar accepted a private jet flight and courtside tickets in violation of the Board’s Standard 4 of the Code of Ethics and Trustee Conflict of Interest policy.

In her interviews with Miller & Chevalier, Chair Vassar acknowledged that she traveled to the March 23, 2023, Madison Square Garden game on the private jet of Donor A—the same donor who sought trademark rights for his Name, Image, and Likeness (“NIL”) collective with Chair Vassar’s support as discussed in section IV.B.3. Chair Vassar told Miller & Chevalier that originally, she was not planning to attend this game, because she could not stay in New York overnight, but changed her mind when Donor A offered her and her daughter seats on his private jet, allowing her to travel to New York and back to Michigan on the same day. According to Chair Vassar, Mr. Tucker and other friends of Donor A also traveled to New York on this jet. Notably, at the time of the trip Mr. Tucker, then-head football coach at MSU was under investigation by MSU for sexual harassment.

Flight confirmation records indicate that the Board’s designated travel agency had reserved seats for Chair Vassar to travel to New York from Detroit on March 23, 2023, and return to Detroit on March 26, 2023, on Delta Air Lines. Contrary to Chair Vassar’s recollection, those flight records suggest that Chair Vassar had intended to attend the game at Madison Square Garden and to spend several nights in New York. MSU personnel confirmed this understanding and explained that the commercial flights would not have been purchased without Chair Vassar’s request and pre-approval. Indeed, Chair Vassar herself confirmed that flight would not have been purchased without “an affirmative action” from her.

When Miller & Chevalier presented Chair Vassar with the flight confirmation records, Chair Vassar equivocated and backing away from her statement that she had not planned to attend the game, claimed that after the flights were purchased, she had “changed [her] mind and said [she] wasn’t going to go.” Chair Vassar told Miller & Chevalier that she informed a relevant MSU employee about her change in plans and requested that the flight reservations be cancelled. When pressed, Chair Vassar equivocated and posited that she may have called Delta Air Lines herself to directly to cancel the flight. Miller & Chevalier was unable to corroborate cancellation of Chair Vassar’s commercial flight. Separately, the relevant MSU personnel clearly and without hesitancy stated that they did not recall and had no record of any requests from Chair Vassar to cancel the flights. Miller & Chevalier requested that Chair Vassar provide evidence of cancellation and she did not.

A March 23, 2023, email from Delta Air Lines the MSU travel agent suggest that Chair Vassar did not change her flight. Writing to the relevant MSU personnel, the MSU travel agent states that she

⁸⁷ Code of Ethics ¶ 4.

“received a message from Delta that Rema Vassar did not take the . . . flights.” The MSU travel agent added that “[s]ince this is a nonrefundable ticket, there will be a credit on file in her name for future travel.” The MSU personnel responsible for booking Trustee travel recalled later asking Chair Vassar what caused her to miss the flight, and Chair Vassar simply indicated that her plans had changed.

In addition to accepting a flight from Donor A, Chair Vassar also accepted courtside tickets from Donor A for her and her daughter. In her interview, Chair Vassar told Miller & Chevalier that she had not been issued tickets because she had not planned to attend the game. However, documentation shows that, in fact, Chair Vassar had been issued four tickets by MSU to sit with the other Trustees attending the game. Those seats were not courtside. Based on Chair Vassar’s own explanation, MSU tickets are only issued when affirmatively requested.

Trustee Scott also alleged that Chair Vassar traveled via a donor’s private jet to a February 4, 2023, men’s basketball game between MSU and Rutgers University, which was also hosted at Madison Square Garden. The investigation did not corroborate that allegation. In her interview, Chair Vassar stated that she traveled via a commercial carrier in that instance and Miller & Chevalier has not identified evidence to the contrary.

Trustee Scott’s letter includes a photograph showing Chair Vassar at the February 4, 2023, game sitting courtside with Donor A and others, including Mr. Tucker. Miller & Chevalier understands that the photograph is from the MSU/Rutgers University game. According to Chair Vassar, she recalled that MSU had issued her tickets via Ticketmaster and that she could not access her Ticketmaster account when she arrived at Madison Square Garden. However, according to the available MSU records for the February 4, 2023, basketball game, Chair Vassar did not have tickets. Chair Vassar explained to Miller & Chevalier that as she was greeting donors at the game, one donor offered her a seat, which she accepted.

Chair Vassar told Miller & Chevalier that the only other time she traveled on a donor’s private jet was on a trip coordinated by the MSU Athletics Department. That trip included other current and now-former Trustees. Based on interviews, Miller & Chevalier understands this flight was organized to allow Trustees and other relevant MSU personnel to consider whether the athletic facilities at MSU should be enhanced to meet the standards of competing academic institutions. In this instance, a different MSU donor made their private jet available to the University to facilitate the group’s travel.

Analysis

Miller & Chevalier substantiates that Chair Vassar’s acceptance of a private jet flight to and from the Kansas State University game from a donor and her acceptance of courtside tickets from donors on two occasions violates Standard 4 of the Code of Ethics and the Trustee Conflict of Interest Policy, which provides that Trustees “will not accept special benefits or anything of value for [themselves] or others in consideration of performing [their] duties.”⁸⁸

Luxury travel of any kind, including travel by private jet, is commonly understood to constitute a “thing of value.” Indeed, by Chair Vassar’s own account, the private flight enabled her to go to New York with her daughter without having to stay overnight. It is also a common understanding that tickets, especially courtside tickets given to Chair Vassar, are an upgrade over the MSU-issued tickets and thus

⁸⁸ Code of Ethics ¶ 4.

represent a “thing of value.” As such, both with respect to the private flight and the courtside tickets, Chair Vassar received things of value from donors.

Chair Vassar’s acceptance of the private jet travel and the courtside tickets also runs counter to the Trustee Conflict of Interest Policy requirement that Trustees will “remain free from the influence of, or the appearance of, any conflicting interest.”⁸⁹ By accepting the flight and the courtside tickets, Chair Vassar created the potential for a conflict of interest by making herself vulnerable to influence by Donor A. Indeed, the risk this is particularly pertinent here, because as noted in section IV.B.3. of this report, when Chair Vassar accepted the jet travel and courtside tickets, Donor A was in discussions with MSU to obtain trademark rights for his NIL collective. Chair Vassar’s involvement in advocating for Donor A’s trademark rights before and after her use of Donor A’s private jet and her acceptance of his courtside seats creates an apparent—if not actual—conflict of interest, in violation of the Trustee Conflict of Interest Policy.⁹⁰

In her interview with Miller & Chevalier, Chair Vassar attempted to excuse her conduct by noting that MSU did not provide her guidance regarding private jet travel. This is not true. Document review identified that on March 11, 2023—approximately two weeks before Chair Vassar traveled on Donor A’s private jet to the Kansas State game in New York—the Trustees received specific guidance via email from MSU’s Office of the General Counsel on the use of a donor’s private jet to travel to MSU events. The guidance explicitly stated that accepting private travel from a donor “has the appearance of [influencing the Trustee’s decision-making] and could implicitly influence the decision-making,” in violation of Standard 4 of the Code of Ethics as well as of Sections II(b) and V of the Trustee Conflict of Interest Policy. The guidance warned that “[i]f the flight is to an MSU event, there is an even greater appearance [of] influence in public duties.” The guidance instructed that “[p]er the Board of Trustees Code of Ethical Conduct [sic], and the Trustee Conflict of Interest Policy, the Trustee in question should not accept the flight unless they pay fair market value for it.” Chair Vassar received this guidance and nevertheless accepted the private flight for herself and her daughter.

The March 11, 2023, guidance caveats that “[i]f the Trustee has a pre-existing relationship [with the donor], has taken these types of flights with this donor prior to being a member of MSU’s Board of Trustees, and/or can say that this has no relation to their position on the Board,” accepting the flight would likely not create a policy violation. However, the guidance recognizes that, even under those circumstances, accepting the flight could still create the appearance of a conflict.

Chair Vassar maintains that Donor A is her friend. While this may be true, the exemption described in the General Counsel’s guidance does not apply here. First, Chair Vassar explained that her relationship with Donor A grew from her friendship with the donor’s wife, who Chair Vassar met in 2021—the same year that she joined MSU Board of Trustees. Second, according to Chair Vassar herself,

⁸⁹ Trustee Conflict of Interest Policy § II(b).

⁹⁰ During her interview with Miller & Chevalier, Chair Vassar indicated that she did not know that the now-former football coach, Mr. Tucker, would also be traveling on the private jet to New York for the basketball game. However, she explained that even if she had known, “it wouldn’t have mattered to [her].” While the allegation raised by Trustee Scott relates to Chair Vassar’s choice to travel on private jets, Miller & Chevalier notes that the company involved is also problematic. Through interviews, Miller & Chevalier determined that at the time of Chair Vassar’s travel to New York, the Board of Trustees was aware that Mr. Tucker was under investigation for alleged sexual harassment. While the Trustees may not have known the details of the allegations against Mr. Tucker, the fact of the allegations and of an ongoing investigation should have caused Chair Vassar to evaluate the propriety of her choice to both travel and sit with Mr. Tucker at the basketball game.

she had never traveled privately with Donor A prior to the March 23, 2023, trip. Third, as explained above, when Chair Vassar traveled to New York for the basketball game against Kansas State University, she did so in her official capacity as Chair of the Board of Trustees. Therefore, even in a light most favorable to Chair Vassar, her conduct is contrary to the expectations of the Code of Ethics and the Trustee Conflict of Interest Policy. Under the guidance from the General Counsel, Chair Vassar should have only accepted the flight for herself and her daughter if she paid fair market value for it, which she did not.

Miller & Chevalier finds that Chair Vassar's 2021 flight to other universities' athletic facilities does not violate either Standard 4 of the Code of Ethics or the Trustee Conflict of Interest Policy because MSU organized this flight expressly for the purpose of conducting MSU business.

In contrast to the March 23, 2023, the 2021 private flight involved other Trustees, personnel from the Athletics Department, and members of the Administration. The Athletics Department coordinated the trip for the official purpose of facilitating MSU business. In this case, the Trustees who traveled on the private jet did so in their official capacity to further their understanding of athletics facility standards at other institutions. The 2021 trip was coordinated by the University through the Athletics Department in furtherance of University business over which Trustees have oversight. As such, the trip lacks the appearance of an outside party potentially attempting to "influence improperly" the Trustees' exercise of their duties.

a. Travel by other Trustees on Private Jets

Chair Vassar asked Miller & Chevalier to review allegations related to other current Trustees', as well as one former Trustee's ("Former Trustee 1"), use of MSU "donors' planes, cars, RVs, and recreational watercraft." Miller & Chevalier conducted document review and interviews to identify and evaluate evidence of the alleged conduct. Through those efforts, Miller & Chevalier corroborated one other instance in which a current Trustee traveled on a donor's private jet. One Trustee admitted to having traveled with Former Trustee 1 on a private jet on one occasion to attend an MSU sporting event. The current Trustee explained that they traveled on the private jet belonging to an individual who has donated to MSU in the past. The Trustee noted that, to their knowledge, the donor did not have any open business pending before the University when they took the private flight. Miller & Chevalier understands that this situation arose because the donor is a longtime friend of Former Trustee 1. Separately, Former Trustee 1 also admitted to having travelled on private jets belonging to friends on multiple occasions. In those instances, Former Trustee 1 clarified that "they were friends long before I became a Trustee, and they have no business relationship [with the University]."

Miller & Chevalier finds that these cases do not present the same concerns as Chair Vassar's private travel to New York. Both the current Trustee and the Former Trustee 1's private travel to the MSU game, and Former Trustee 1's other instances of private travel, occurred prior to the issuance of the March 11, 2023, travel guidance, which clarified what might have been previously unclear—i.e., that accepting private flights from MSU donors, particularly when traveling to an MSU event, runs afoul of the Code of Ethics and the Trustee Conflict of Interest Policy, unless the Trustee can show a longstanding friendship with the donor that predates the Trustee's role on the Board, a history of taking such private flights with the donor prior to becoming a Trustee, or that the flight is unrelated to the Trustee's position. And these cases would more closely fit within the caveat provided in the guidance. In these cases, to Miller & Chevalier's knowledge, the owners of the private jets had no business pending before the University. Nonetheless, Miller & Chevalier underscores the March 11, 2023, guidance from the Office of the General Counsel, and encourages Trustees to consider the optics of their travel

arrangements in any instance when traveling privately with donors or other outside parties, before accepting private flights or other benefits.

3. Allegation that Chair Vassar Participated in Donor A's Trademark/NIL Negotiations

During this investigation, Interviewees raised concerns over Chair Vassar's relationship with Donor A, the same individual that provided courtside tickets and private plane travel to Chair Vassar and her daughter as described in section IV.B.2. above. Specifically, Interviewees described an instance in which Chair Vassar became directly involved in negotiations between the University and Donor A related to Donor A's use of MSU trademarks in connection with Donor A's NIL collective. The Interviewees perceived that Chair Vassar leveraged her role as a Trustee to help a friend and donor to secure a business deal with MSU, despite the Administration's reservations about the request.

Summary of Factual Findings

Miller & Chevalier corroborated the allegation. Interview accounts and documentation reflect that in August 2022, MSU's department responsible for trademark licensing entered discussions with Donor A regarding trademark rights for his NIL collective to produce merchandise bearing MSU's registered trademarks. According to accounts from several Interviewees, an employee of MSU's Athletics Department organized a meeting on August 18, 2022, between Donor A and employees related to MSU trademark licensing and MSU's Athletics Department to discuss the NIL collective's request. Documents reviewed confirm that the initial calendar invite for this meeting did not include Chair Vassar. Nevertheless, she attended the August 18, 2022, meeting.

Interviewees stated that during the meeting, MSU employees raised concerns related to the NIL collective's request, including concerns about risks arising from an unsettled legal landscape relating to NIL collectives, the potential adverse impact on the University's interests of licensing MSU's trademark rights to a collective, as well as questions over the potential risk of Title IX violations both from the perspective of the collective's branding, and from the perspective of the collective's unequal support for men's and women's sports.

These concerns notwithstanding, several Interviewees recounted receiving follow-up inquiries and calls from Chair Vassar related to the collective's request for trademark licensing rights. For instance, in the period following the August 18, 2022, meeting, Interviewees gave accounts of calls from Chair Vassar where she asked questions such as, whether MSU "was any closer to doing work with [the collective]" or whether MSU was "any closer to getting co-branded with [the collective]." An Interviewee recalled several internal meetings convened by MSU employees in direct response to calls from Chair Vassar asking about progress on MSU's decision-making related to the collective's request for trademark rights. MSU personnel also recounted a conversation with Chair Vassar in or around June 2023 where Chair Vassar stated categorically that "we have to get to yes" on the issue of approving trademark licensing rights for Donor A's collective. Within this same time period, Chair Vassar also spoke to MSU personnel involved in the discussions and intimated that the MSU personnel could be on a shortlist of employees being considered for job termination, which the MSU personnel perceived as a form of undue influence and intimidation.

Notably, in one of her interviews with Miller & Chevalier, Chair Vassar acknowledged a friendship with Donor A, the contours of which are more fully outlined in section IV.B.2. of this report. Chair Vassar also does not deny participating in the August 18, 2022, meeting with Donor A or deny her subsequent inquiries about the Administration's decision relating to Donor A's request for trademark

rights. In discussing her motivation for intervening in the Administration’s discussions with Donor A, Chair Vassar stated that she did not specifically “care about trademarks,” but she cared about “[Donor A] giving his money to the University.” Chair Vassar acknowledged that responsibility over the University’s trademarks rests with the Administration and that an appropriate process for intervening would have been to escalate the matter to the Interim President. However, Chair Vassar said she did not want to involve the Interim President because, in her view, the Interim President was not “interested enough in the whole job,” and was “not engaged at all.” Thus, Chair Vassar stated, “I am not going to force you to do what needs to be done. I’ll just go around you.”

MSU ultimately declined to approve the collective’s request for trademark licensing rights. Instead, in September 2023, the collective obtained sponsorship rights from MSU.

Analysis

Chair Vassar’s presence at the August 18, 2022, meeting alongside Donor A, her subsequent inquiries and contact with MSU personnel, and her demand to MSU personnel that they “have to get to yes” is in breach of the Bylaws which delegates authority over the University’s administrative matters to the President. Article 7 of the Bylaws that was in place during the trademark licensing discussion stated that “[a]ll communications from the Board or any of its committees addressed to any officer, professor or instructor, or other employee of the University shall be transmitted through the office of the President of the University.”⁹¹ While Article 7 did not preclude the Board from contacting any person within the University community, it nevertheless lays out the appropriate chain of official communication between Trustees and university employees, a process which Chair Vassar expressly circumvented in this case.

Chair Vassar notes that her involvement in these trademark discussions was because NIL-related issues are “germane” to the University and because she did not want the “University to fall behind.” However, her presence at the August 18, 2022, meeting and her subsequent queries and calls to MSU personnel, whether well-intended or not, put pressure on MSU personnel in a way that compromised their ability to carry out what is clearly in the scope of the Administration’s purpose and function. Within MSU’s administrative hierarchy, Trustees are perceived to wield considerable power. As such, the unannounced presence of Chair Vassar at a meeting with MSU employees carries significant weight. Indeed, several interviewees attested to feeling pressured into agreeing to grant trademark licensing rights to the collective despite their concerns. In Standard 7 of the Code of Ethics, the Board agrees to uphold its “role as the supervisory and policymaking body of the institution . . . and avoid involvement in administrative matters not subject to the direct authority of the Board.”⁹² Chair Vassar’s actions in this case are a clear overreach into the University’s administrative matters and goes beyond the Board’s oversight and supervisory role.

Chair Vassar’s actions also constitute a breach of the Trustee Conflict of Interest Policy. In Standard 3 of the Code of Ethics, Trustees agree that they will “avoid conflicts of interest and appearances of impropriety, and otherwise conduct [themselves] in a manner that conforms with the Board of Trustees Conflict of Interest Policy.”⁹³ Similarly, Section II(b) of the Trustee Conflict of Interest Policy also states that Trustees must “endeavor to remain free from the influence of, or the appearance

⁹¹ 2003 Trustee Bylaws Article 7.

⁹² Code of Ethics ¶ 7.

⁹³ *Id.* ¶ 3.

of, any conflicting interest in fulfilling their Board duties.”⁹⁴ Considering the apparent friendship and acceptance of “things of value” by Chair Vassar from Donor A, as laid out in section IV.B.2. of this report, Chair Vassar’s actions create a potential conflict of interest and constitute a breach of the Trustee Conflict of Interest Policy, as well as Standards 3 and 7 of the Code of Ethics.

4. Allegation that Chair Vassar Independently Authorized a Clothing Company to use MSU Trademarks

At the start of this investigation, Former Trustee 1 reported to Miller & Chevalier that on or about February 16, 2023, Chair Vassar authorized a clothing company to use MSU trademarks on their merchandise without the knowledge or consent of the Administration. This allegation relates to conversations between Chair Vassar and the owner of a Michigan-based clothing company (“Owner 1”) that is known to MSU’s Administration as a repeat infringer of MSU’s trademarks.

Summary of Factual Findings

Interview accounts and documentary evidence indicate that, in the aftermath of the February 13, 2023, tragic shooting, Owner 1 reached out to Chair Vassar, and they subsequently engaged in one or more phone conversations. While the details of these conversations are unclear, documentary evidence suggests that the conversations related to Owner 1’s promotion and sale of merchandise bearing an MSU trademark.

According to interview accounts and documentary evidence, in and around March 2023, MSU personnel identified infringing content relating to the sale of merchandise bearing an MSU trademark on the Instagram page of Owner 1’s clothing company. Around March 10, 2023, MSU took action that resulted in the clothing company’s Instagram page being taken down. Following MSU’s action, on March 16, 2023, the clothing company, through its counsel, commenced discussions with MSU to request reinstatement of the company’s Instagram page. During these discussions, Counsel for the clothing company represented to MSU employees that “agents of [MSU] made representations to [his client] that induced certain conduct.” Further interactions between MSU and Owner 1 relating to the clothing company’s request for reinstatement confirmed that it was Chair Vassar who was in contact with Owner 1.

Chair Vassar denied giving Owner 1 permission to use MSU’s trademark. In a March 2023 text exchange with an MSU employee following the clothing company’s request for reinstatement, Chair Vassar explained that she had communicated with Owner 1, but only in response to a message from Owner 1 about donations following the February 13, 2023, shooting. Chair Vassar’s account is supported by a text message from Owner 1 to Chair Vassar explaining that “he was trying to do something good” and apologizing for putting the Chair in “a weird position.” Chair Vassar shared these text messages with the MSU employee.

Analysis

Based on available evidence, Chair Vassar’s explanation appears credible. However, as Chair Vassar did not provide her phone for review, Miller & Chevalier could not review the full record of Dr. Vassar’s communications with Owner 1. Separately, interview accounts indicate that following the University’s takedown of the company’s Instagram page, Owner 1 stated to MSU personnel that he knew that if he approached the Administration with his request to use MSU’s trademark, they would

⁹⁴ Trustee Conflict of Interest Policy § II(b).

have denied his request. Owner 1’s comment indicates the perception that Chair Vassar can be approached with administrative matters to circumvent the purpose and function of the Administration.

C. Allegations Related to Chair Vassar’s Relationship with the Administration and the Interim President

Trustee Scott’s October 20, 2023, letter alleges that Chair Vassar bullied⁹⁵ the Interim President and usurped her authority, including by meeting with Lansing officials without the Interim President present. Trustee Scott’s letter also alleges that Chair Vassar made threats and incendiary statements related to the Board’s vote to change the Bylaws.

In addition, in the course of the investigation, Interviewees described incidents supported by evidence, demonstrating that Chair Vassar and Trustee Denno encouraged students to embarrass Interim President Woodruff.

1. Allegation that Chair Vassar Bullied Interim President Woodruff and Usurped Her Authority

Trustee Scott raises concerns regarding Chair Vassar’s relationship with Interim President Woodruff and alleges that Chair Vassar “bullied Interim President Teresa Woodruff” “[s]ince becoming Chair . . . on multiple occasions and has usurped her authority.” Trustee Scott offers several examples of conduct that she considers support her allegations.

While the investigation did not corroborate all of the examples Trustee Scott offered, the investigation did confirm a fraught relationship between Chair Vassar and the Interim President. However, based on the examples provided by Trustee Scott and the lack of evidence to support the full extent of the allegation, Miller & Chevalier does not substantiate that Chair Vassar has “bullied” the Interim President on multiple occasions or has usurped her authority.

Summary of Factual Findings

Trustee Scott alleges that Chair Vassar admonished the Interim President for speaking directly with individual Trustees. Miller & Chevalier identified one incident that corroborates this allegation. Several Interviewees, including Chair Vassar, recounted that during the fall of 2023, Interim President Woodruff contacted MSU Trustee Kelly Tebay (“Trustee Tebay”) in connection with an initiative to revise MSU’s gun policy, which Trustee Tebay championed and advocated be implemented prior to the start of the 2023–2024 academic year. The Interim President contacted Trustee Tebay to request a meeting to add the gun policy resolution to the Board agenda. According to an Interviewee with direct knowledge, upon learning about this contact, Chair Vassar called the Interim President to say that she “should never talk to trustees on [her] own.” Trustee Tebay learned of the conversation and discussed the incident directly with Chair Vassar, who told Trustee Tebay that she had given Interim President Woodruff “a talking to” and explained that she told Interim President Woodruff that “she shouldn’t talk to Kelly Tebay about these things. If she wants to change these things, she should talk to me.” When asked

⁹⁵ “Bullying is generally thought to be a pattern of persistent, unwelcome, repetitive behavior - known to be unwelcome that creates a hostile, intimidating or toxic environment - targeted at an individual or group of individuals.” Barbara Roberts et al., *Bullying in the Workplace: background and a call to action* 2, MSU-WorkLife Office (Mar. 2020), <https://workplace.msu.edu/wp-content/uploads/2022/01/Workplace-Bullying-Background-and-Call-to-Action.pdf> (citing Susan Harthill, *Bullying in the Workplace: Lessons from the United Kingdom*, 17 Minn. J. of Int’l L.247 (2008)).

about the incident by Miller & Chevalier, Chair Vassar recalled the conversation with the Interim President. However, she denied that having admonished the Interim President for speaking to another Trustee stating that she instructed the Interim President that agenda-setting must go through the Chair and the Vice Chair. Chair Vassar added that she does not oppose the Interim President speaking to individual Trustees and that, at the outset of her tenure as Chair, she encouraged the Interim President to schedule individual meetings with each Trustee, which the Interim President did. At least two other Trustees corroborated that the Interim President scheduled individual meetings with them at Chair Vassar's suggestion.

Several Interviewees reported to Miller & Chevalier that during the 2023 Mackinaw Conference attended by certain Trustees and administrators, they observed an interaction between Chair Vassar and the Interim President during which it appeared that Chair Vassar was admonishing the Interim President. During her interview with Miller & Chevalier, the Interim President provided an account that largely aligns with the perceptions reported by other Interviewees. When asked by Miller & Chevalier about the interaction, Chair Vassar recalled speaking to the Interim President but denied the allegation that she had admonished the Interim President.

Trustee Scott also alleges that Chair Vassar has requested Interim President Woodruff's speaking schedule and demanded that she be allowed to speak at the Interim President's engagements. The investigation did not identify any independent evidence to support the allegation that Chair Vassar demanded to speak at these events.⁹⁶

Finally, Trustee Scott alleges that Chair Vassar inserts herself into events handled by the Interim President without invitation and demands that University events be delayed until her arrival. Miller & Chevalier did not identify evidence to corroborate either of these allegations.⁹⁷

Analysis

The investigation did not find evidence to support that the conduct specifically alleged by Trustee Scott amounts to "deceit, incivility, intimidation, silencing, or retaliation" under Standard 8 of the Code.⁹⁸

Although the investigation did not find a violation of the Code of Ethics, as Chair of the Board, Chair Vassar must uphold the highest standards of conduct as embodied in the Code of Ethics. Several Interviewees, including the Interim President, provided accounts of behavior by Chair Vassar towards the Interim President that they perceived as falling short of that standard. Those accounts have not

⁹⁶ When asked about this allegation, Chair Vassar stated that the only time when she may have requested access to the Interim President's schedule would have been to coordinate speaking engagements with the Interim President following the February 13, 2023, shooting. Miller & Chevalier recognizes that this request was due to extenuating circumstances.

⁹⁷ In addition, Former Trustee 1 alleged that Chair Vassar intended to exclude the Interim President and the Administration from an October 20, 2023, Advancement event at Cowles House, where the Interim President resides. Contemporaneous emails suggest that Chair Vassar did plan an event at Cowles House that initially did not include the Interim President, but in an email to the Board of Trustees on October 18, 2023, Chair Vassar stated that this exclusion was a mistake. Two MSU employees indicated that the exclusion was intentional. Miller & Chevalier did not corroborate that Chair Vassar intentionally excluded the Interim President from the event but recognizes that Chair Vassar's actions reflect a lack of appreciation for the optics of not inviting the Interim President to the event.

⁹⁸ Code of Ethics ¶ 8.

been independently corroborated, but the perceptions shared with Miller & Chevalier came from a broad cross-section of the MSU community and should not be ignored as doing so risks eroding confidence in leadership’s commitment to the Code of Ethics and the principles it promotes.

When asked about her relationship with the Interim President, Chair Vassar denied ever acting disrespectfully toward her and described her relationship with the Interim President as “purely professional.” Chair Vassar noted instances in which she sought to empower the Interim President, including by encouraging her to act as a President and lead with authority, a sentiment that Chair Vassar repeated to the Interim President during the February 2, 2024, public meeting.

Returning to Standard 8 of the Code of Ethics, the commitment not to condone “deceit, incivility, intimidation, silencing, or retaliation” applies to the entire Board of Trustees, but most importantly applies to its Chair, who is uniquely positioned to define the tone and culture of the University. The investigation made clear that observers of Chair Vassar’s conduct towards the Interim President do not perceive Chair Vassar to be appropriately respectful or professional. This perception will undercut public respect for the Board, and thus is something that Chair Vassar and all Trustees should strive to change by conforming their own behavior to the highest standards in the Code of Ethics.

2. *Independent Evidence Reflecting Statements Related to Interim President Woodruff*

Separate from Trustee Scott’s allegations, Miller & Chevalier received information from another member of the MSU community, Interviewee 10, regarding a November 1, 2023, meeting between students, Chair Vassar, and Trustee Denno. According to Interviewee 10, the students called the meeting to solicit Chair Vassar’s and Trustee Denno’s advice in advance of meeting with the Interim President on issues of interest to certain student groups. Miller & Chevalier received contemporaneous recordings from that meeting. To protect student confidentiality and to mitigate the risk of leaks, Miller & Chevalier did not make these recordings available to Chair Vassar or Trustee Denno.⁹⁹ However, in interviews, Miller & Chevalier asked Chair Vassar and Trustee Denno about the statements attributed to them, in some instances reading statements verbatim. They were also afforded the opportunity to address and respond to the attributions.

The recordings provided to Miller & Chevalier reveal statements made by Chair Vassar and Trustee Denno providing students with confidential information that was not in MSU’s interest to provide and encouraging student actions to embarrass and scare Interim President Woodruff. For example:

- ▶ Chair Vassar: “MSU lost its accreditation last summer because . . . the Provost and Interim President neglected to submit paperwork to the Federal Government.”¹⁰⁰
- ▶ Trustee Denno [commenting on accreditation]: “And they will deny They will lie to you about all this. This administration never does anything wrong. They never apologize. They don’t care about you. They don’t care about Rema. They don’t care about me.”

⁹⁹ Miller & Chevalier conducted a forensic analysis of the recordings to confirm that they were free of manipulation or tampering that would compromise their reliability.

¹⁰⁰ Chair Vassar inaccurately stated that Michigan State University lost its accreditation in the summer of 2022.

- ▶ Chair Vassar: “Hold on to this [referring to the alleged loss of accreditation] like a trump card until you need it and at one point it might . . . become germane.”
- ▶ Trustee Denno: “I think the trump card is embarrassing them [referring to the Administration]. They do not like being embarrassed. The Provost and Interim President are looking for their next jobs; they just don’t want to be embarrassed. They want to come out with no scandals.” Then adding that the way to embarrass them is by “press, media They hate that. They hate being publicly embarrassed.”
- ▶ In response to a student’s question about how to apply pressure on the Administration to meet their specific demands, Chair Vassar stated: “Part of what you heard on Friday [referring to the October 27, 2023, Board public meeting] was her So, the survivors came for the throat of the Board. But every other group came for the neck of Teresa Somehow that’s not getting picked up—that every single group, the graduate students, the Palestinians, the [Black Student Alliance] . . . , all these people, came for her neck . . . ‘You are mired in scandal. You are mired in disgruntled Spartans. . . . But there’s so many other groups that you could partner with to crucify her.”
- ▶ Chair Vassar: “The other thing that I think you should do in advance Flood the public comment meeting for the next meeting in December. Start signing up now. That’ll trigger them Flood it, like 30 seats deep.”
- ▶ Trustee Denno: “Embarrass [Interim President Woodruff] . . . tell her you’re working with [Black Student Alliance], whether you are or not . . . that will terrify her.”
- ▶ During the call, students discussed a recently-launched #NOTASPARTAN campaign, designed to draw attention to issues impacting specific students of color at MSU. Trustee Denno suggested that students should incorporate the slogan into a press conference after their meeting with Interim President Woodruff, adding that the message should be “we are joining the not a Spartan movement and this is on Teresa. It has started on Teresa, and this is growing under Teresa.” Chair Vassar added, “If you go straight to The State News afterwards with ‘we left that meeting with the Interim President because we are not a Spartan. . . . ‘ Literally make that the headline when you go to The State News and the LSJ [Lansing State Journal] to talk about your meeting with Interim President.” Chair Vassar also instructed the students that when they signed up for public comment, “put in the subject, #NOTASPARTAN. She [Interim President Woodruff] will be terrified if it’s in a public meeting.”
- ▶ When the students shared the idea of making #NOTASPARTAN t-shirts, Trustee Denno offered to pay for the shirts but asked the students “to keep [his] name out of it.”

For each of these statements attributed to her, Chair Vassar denied making them. Trustee Denno said he could not recall making any statements attributed to him. More broadly, both Chair Vassar and Trustee Denno stated that their goal on the call was to support ideas generated by students. Chair Vassar noted that if students want to elevate their agenda, they need to do so through “the hammer or the carrot,” and referring to the Administration, noted “[t]hey only know the hammer. They literally have used it. Press is the way to go. They smeared me in the press So, if there is a mechanism, then that is the one.”

Miller & Chevalier does not credit Chair Vassar’s assertion that she did not make these statements nor does Miller & Chevalier credit Trustees Denno’s statements that he could not recall making the statements attributed to him. Interviewee 10 provided detailed and credible accounts of the meeting with Chair Vassar and Trustee Denno. The Interviewee provided contemporaneous evidence that corroborate those accounts.¹⁰¹ The recordings literally speak for themselves.

Analysis

The statements made by Chair Vassar and Trustee Denno disregard the standards of behavior expected of a Trustee and constitute a violation of Standard 8 of the Code of Ethics and of their fiduciary duties to MSU under Standard 5 of the Code of Ethics. This analysis holds even if Miller & Chevalier were to credit Chair Vassar’s and Trustee Denno’s explanations that they were merely supporting or advising on ideas generated by students.

As Trustees, Chair Vassar and Trustee Denno are required—and agreed—not to condone “deceit, incivility, intimidation, silencing, or retaliation.”¹⁰² By advising students to “embarrass” and “terrify” the Interim President, Chair Vassar and Trustee Denno were not only condoning incivility and intimidation, they were inviting it. Moreover, as Trustees, Chair Vassar and Trustee Denno are duty bound to safeguard the interests of the University, as Trustees must “exercise responsible stewardship, uphold . . . [their] fiduciary duties to the University and the State of Michigan, and ensure necessary and proper controls safeguarding public resources and the integrity of University business are in place and observed.”¹⁰³ Their efforts to encourage students to publicly embarrass the leader of the University flies in the face of that duty, since inviting embarrassment to the head of an institution is akin to inviting public embarrassment of the institution itself.

3. Allegation that Chair Vassar Met with Lansing Officials Without the Interim President’s Knowledge

In support of her allegation that Chair Vassar has usurped the Interim President’s authority, Trustee Scott claims that Chair Vassar regularly “hold[s] meetings and discuss[es] Board action without the knowledge or participation of the [I]nterim [P]resident, . . . includ[ing] multiple meetings with Lansing officials to pitch moving university colleges and students to a Lansing site.”

Summary of Factual Findings

The investigation established that Chair Vassar, Trustee Denno, Trustee Tebay, and Interviewee 6 attended multiple meetings with Lansing officials during the summer of 2023. All other Trustees stated that they were unaware of the meetings. According to Interviewee accounts, the meetings generally focused on building a public-private partnership between MSU and the City of Lansing and related development opportunities.

Interview accounts also confirm that the Interim President and other administrators held separate parallel meetings on related topics with Lansing officials around the same time. Administrators

¹⁰¹ In addition to the contemporaneous recordings, Miller & Chevalier received emails and text messages revealing ongoing communications between Chair Vassar, Trustee Denno, and students related to the Administration and the Board of Trustees. Due to heightened confidentiality concerns, Miller & Chevalier did not question Chair Vassar or Trustee Denno about those communications and, therefore, is not relying on that evidence in this report.

¹⁰² Code of Ethics ¶ 8.

¹⁰³ *Id.* ¶ 5.

noted that the lack of coordination and conflicting or inconsistent messaging between respective meetings created confusion among stakeholders.

Analysis

The investigation corroborated the fact that Chair Vassar, Trustee Denno, Trustee Tebay, and Interviewee 6 held meetings with Lansing officials without the knowledge or participation of the Interim President. However, as noted in preamble to the Bylaws, part of the Board’s mission is to advocate for the “essential importance of the University’s mission” including with “the Legislature, elected state officials, and to the federal government.” Here, it is not entirely clear whether the substance of the Trustees’ meetings with Lansing officials involved administrative matters or fell within the Board’s purview in advancing the University’s mission. It is clear, however, that the lack of effective coordination between the Administration and Trustees caused a disconnect. The investigation could not substantiate the allegation.¹⁰⁴

D. Allegation that Chair Vassar Threatened Trustees

Trustee Scott further alleges that during a September 2023 Board of Trustees working session, Chair Vassar threatened to call fellow Trustees racist if the Trustees voted to change the election method for Chairs of the Board of Trustees and make the change effective January 2024,¹⁰⁵ which would have effectively ended Chair Vassar’s term one year early. In addition, Trustee Scott alleges that Chair Vassar told the Trustees they would regret voting against her and told Trustee Scott to “read a book.” Miller & Chevalier corroborated that Chair Vassar in fact told Trustee Scott to “read a book.” However, Miller & Chevalier cannot substantiate the allegation that Chair Vassar specifically threatened to call other Trustees racist.

Trustee’s accounts and impressions varied on Chair Vassar’s statements during the discussion on a vote to change the Bylaws. Only one Trustee, Trustee 3, corroborated Trustee Scott’s specific allegation stating: “we get there and [Chair Vassar] tells us we are all racist . . . and said [to Trustee Scott], ‘You need to read books.’” Trustee 1 stated that they did not believe that Chair Vassar was calling Trustee Scott a racist but understood Chair Vassar was relaying to Trustee Scott that, despite being a Black woman, did not “understand Black history as well as” Chair Vassar did, and that Trustee Scott should “read a book” to better understand the potential perceptions of removing Chair Vassar as the first Black female Chair of the MSU Board of Trustees. Trustee 2 stated that she is not aware of any direct or indirect instances in which Chair Vassar labeled anyone as racist. Trustee 2 further explained that altercations such as this one “go both ways” between Chair Vassar and Trustee Scott, in that “[t]hey both accuse each other of their [lack of] knowledge of Black history.” Notably, at least two Trustees recalled that it was Trustee 2 who raised the optics of amending the Bylaws during Chair Vassar’s term.

¹⁰⁴ In addition, Former Trustee 1 alleged that Chair Vassar attempted to strengthen an MSU administrator’s candidacy for MSU president by bringing him to Lansing meetings with key legislative leaders. While Miller & Chevalier found that Chair Vassar and Trustee Denno did have some level of interest in the MSU administrator being MSU’s next president, Miller & Chevalier did not find evidence that these two Trustees invited the MSU administrator to the Lansing meetings for the purpose of fortifying his candidacy. And thus, Miller & Chevalier did not find policy violations relating to this allegation.

¹⁰⁵ Trustee Scott’s October 22, 2023, letter states that the proposed change would take place in January 2025. Miller & Chevalier believes that Trustee Scott intended to say January of 2024, which would have ended Chair Vassar’s term one year early.

For her part, Chair Vassar denied the allegation that she threatened to call Trustees racist if they voted for the proposed amendment.

Based on interviews, Miller & Chevalier did not substantiate the allegations that Chair Vassar threatened to call Trustees racist or otherwise told Trustees that they would regret voting against her position on the proposed amendment. Chair Vassar does not deny that she instructed Trustee Scott to “read a book,” and as such, Miller & Chevalier substantiates this allegation, but based on the inconsistent accounts provided, does not substantiate a violation of the Code of Ethics. The interaction does underscore the importance of Trustee’s upholding the standards of conduct embodied in the Code of Ethics and internalizing their role as leaders in committing to acting with civility and respect regardless of the setting or issues discussed.

E. Allegations of Retaliation

During the investigation, several individuals came forward with allegations of retaliation by Chair Vassar and Trustee Denno. Miller & Chevalier found corroboration for each of those claims that substantiates that conduct of Chair Vassar and Trustee Denno violated Standard 8 of the Code of Ethics.

1. Allegation of Retaliation: Interviewee 9

Interviewee 9 alleged that Chair Vassar retaliated against them for refusing to withhold information from their supervisors related to requests from Chair Vassar.

Summary of Factual Findings

Interviewee 9 told Miller & Chevalier that on September 19, 2023, Chair Vassar called Interviewee 9 to request that Interviewee 9 engage an external vendor for a special project and draft a statement related to an analysis on campus culture for media distribution. According to Interviewee 9, Chair Vassar requested that Interviewee 9 distribute the statement to the media without the knowledge and approval of their department leadership, including Interviewee 9’s supervisor. Interviewee 9 explained to Chair Vassar that this task could not be done and reported the conversation to their supervisor. The next day, after repeated text messages from Chair Vassar inquiring about the status of the statement, Interviewee 9 explained again that statements for media distribution required approval from the Director of Communication and two others and that the request must be escalated. After further probing to confirm that Interviewee 9 needed approval from all three individuals, Chair Vassar texted “this is concerning and odd” and desisted in her request. Interviewee 9 took no further action but reported to Miller & Chevalier that this series of events left Interviewee 9 feeling uncomfortable and afraid of getting in trouble.

In late September or early October 2023, Interviewee 9 attended an event at Cowles House. Chair Vassar was also in attendance. Interviewee 9 recalled greeting Chair Vassar, who said, “I’m glad I got you here alone.” Then, referring to the statement that she had requested, Chair Vassar asked, “who told you not to write the statement?” Following Interviewee 9’s response, Chair Vassar told Interviewee 9 not to trust their supervisors “because they don’t have your back. I’m the only one who has your back. I’m the one who hired you because they wanted to hire someone else . . . I can call you and we can talk later. They wanted someone totally different.” Recalling this conversation, Interviewee 9 described Chair Vassar’s demeanor as “bullyish” and “manipulative.” On October 2, 2023, shortly after the exchange with Chair Vassar, Interviewee 9 learned that the Board of Trustees retained an external firm that, in Interviewee 9’s view, would be tasked with responsibilities previously assigned to Interviewee 9.

Interviewee 9 perceived that decision to be in retaliation for Interviewee 9's refusal to follow Chair Vassar's requests.

When asked generally about the accounts detailed above, Chair Vassar recalled requesting that Interviewee 9 draft a statement but did not affirm that she instructed Interviewee 9 not to share the statement with their supervisors. Notwithstanding, Chair Vassar told Miller & Chevalier that her "expectation was that [Interviewee 9] would be keeping the Board's conversations confidential" but that Interviewee 9 "went straight to" their supervisor. Chair Vassar also recalled the conversation with Interviewee 9 at Cowles House as recounted by Interviewee 9 to Miller & Chevalier. However, Chair Vassar denies making her comment to Interviewee 9 with any intent to bully or manipulate, stating that she did not tell Interviewee 9 to be "careful" (referring to Interviewee 9's supervisors).

Notably, during her interview with Miller & Chevalier, Chair Vassar stated, without prompting, "because now [Interviewee 9] has charged this, I don't work with [Interviewee 9] anymore." Miller & Chevalier instructed Chair Vassar not to assume who had reported these events. Chair Vassar responded "[w]ell, [it was a] private conversation, so either [Interviewee 9] told you or someone else. So, I don't work with [Interviewee 9]."

Analysis

Miller & Chevalier credits Interviewee 9's statements of interactions with Chair Vassar and substantiates a violation of Standard 8 of the Code of Ethics, which prohibits retaliation.

Interviewees with direct knowledge corroborated material aspects of Interviewee 9's statements, including that Chair Vassar instructed Interviewee 9 not to share the request for the statement with their supervisors. Contemporaneous text messages made available to Miller & Chevalier offers further corroboration.

Miller & Chevalier also credits Interviewee 9's statement regarding the interaction with Chair Vassar at Cowles House. It is undisputed that Chair Vassar told Interviewee 9 not to trust their supervisors "because they don't have [Interviewee 9's] back." Interviewee 9 and Chair Vassar both provided accounts that Chair Vassar represented to Interviewee 9 that Chair Vassar played an essential role in Interviewee 9's employment. Chair Vassar's intent in making that statement is not critical to our analysis, since assessments of threats and intimidation, especially in a workplace, turn on the impact that the conduct has on the recipient, considering also factors such as seniority, hierarchy, and perceptions of power and authority. Applying those factors here, it is reasonable that Chair Vassar's words, regardless of her intent, could be interpreted as a veiled or even direct threat, especially when directed at a junior and recent employee.

Regarding Interviewee 9's retaliation allegation, Miller & Chevalier has reviewed contemporaneous emails and documentation related to the Board of Trustees' decision to engage the external firm and find that the evidence does not substantiate that the decision to hire the external firm was in retaliation against Interviewee 9. The review shows that the Board of Trustees identified an independent need for additional support from the external firm and that discussions to engage an external firm predate any of the exchanges discussed above.

However, Chair Vassar's statement to Miller & Chevalier that she will no longer work with Interviewee 9 because they made a complaint about Chair Vassar's conduct constitutes retaliation, in violation of Standard 8 of the Code of Ethics.

2. Allegation of Retaliation: Dr. Jack Lipton

Faculty Senate Chair, Dr. Jack Lipton (“Dr. Lipton”), alleged that Chair Vassar and Trustee Denno levied accusations of racial bias against him in retaliation for a resolution, passed by the Faculty Senate, calling for Chair Vassar’s resignation. Following the October 27, 2023, Board of Trustees public meeting, referring to disruptions by meeting participants, Dr. Lipton told the press that Chair Vassar “elected to let the mob rule the room.” Dr. Lipton claims that since the publication of that statement, he has received letters from various campus groups accusing him of using racist language to describe Black and Brown students. Dr. Lipton denies that this was his intent and alleges that the letters he has received have been motivated by Chair Vassar and Trustee Denno in retaliation for the Faculty Senate vote.

Summary of Factual Findings

The investigation substantiated the allegation that Trustee Denno and Chair Vassar encouraged some students to engage in conduct designed to publicly label Dr. Lipton as a racist.¹⁰⁶

On October 26, 2023, in his capacity as Faculty Senate Chairperson, Dr. Lipton introduced a Faculty Senate resolution calling for Chair Vassar’s resignation. Email documentation shows that on that same day, Chair Vassar contacted Dr. Lipton asking to speak about the resolution “[s]omeday soon.”

On October 27, 2023, five days after the publication of Trustee Scott’s letter, the Board of Trustees held a public Board meeting, during which community and MSU supporters of Chair Vassar spoke out on her behalf and against the allegations made by Trustee Scott. The public Board meeting also included student speakers from various organizations and speakers representing other community interests.¹⁰⁷ Miller & Chevalier interviewed several people, including Trustees, who attended or remotely viewed the public Board meeting. Without exception, the Interviewees described the meeting as chaotic, with participants shouting over each other and interrupting speakers. One Trustee reported feeling “blindsided.” An Interviewee, who watched the hearing remotely, described being “embarrassed” by the meeting dynamics and by the interactions between Chair Vassar and Trustee Scott.

In a comment to the press after the public Board meeting, Dr. Lipton stated that the meeting “filled with Chair Vassar supporters, demonstrated Trustee Scott’s charges of intimidation and bullying in action,” and “[t]he chaos brought and disrespect shown by her supporters could have been stopped by a single statement from Chair Vassar, yet she elected to let the mob rule the room.” Dr. Lipton’s statement appeared in The Detroit News on October 29, 2023.¹⁰⁸

¹⁰⁶ During the investigation, Miller & Chevalier received contemporaneous recordings and other independent evidence that substantiates this allegation. To protect the confidentiality and identity of Interviewee 10, Miller & Chevalier did not make these recordings and some other evidence provided to Miller & Chevalier available to Chair Vassar or Trustee Denno. However, Miller & Chevalier read verbatim statements from these sources that were attributed to Chair Vassar and Trustee Denno and provided each the opportunity to address the attribution and provide their explanations of these statements.

¹⁰⁷ Bd. of Trs., *Minutes of the Meeting*, MSU (Oct. 27, 2023), <https://trustees.msu.edu/meetings/documents/2023/October%2027%202023%20-%20Accessible.pdf>

¹⁰⁸ Anne Snabes, *MSU Faculty Senate chair slams board leader Rema Vassar for chaos, outbursts at meeting*, The Detroit News (Oct. 29, 2023), <https://www.detroitnews.com/story/news/local/michigan/2023/10/29/msu-faculty-senate-chair-slams-trustee-vassar-for-chaos-at-meeting/71375834007/>.

On October 30, 2023, Dr. Lipton responded to an October 26, 2023, email from Chair Vassar asking to speak to him about the Faculty Senate resolution. Chair Vassar replied on October 31, 2023, stating that while she “would like to talk about the resolution, [she would] also like to discuss [her] concern about [Dr. Lipton’s] description of our black students.” The next day, Dr. Lipton received notification from the Office of the Provost that someone had filed a complaint against him for making a racist statement. On November 2, 2023, Dr. Lipton received a copy of a letter from students at the NAACP Michigan State Conference Youth & College Division, addressed to the Board of Trustees and raising concerns about “a persistent escalation of racial terror that minority students are experiencing” at MSU.¹⁰⁹ The letter accuses the University of being “complicit by ignoring the students’ calls for MSU to be a safe learning environment” and MSU officials of “lack of attention” to the experiences of Black and Brown students.¹¹⁰ The letter also accuses Dr. Lipton of “labeling the students as a ‘mob’ when they attempted to voice their concerns.”¹¹¹ Similar letters followed on November 4, 2023, from the MSU Black Students Alliance,¹¹² and on November 14, 2023, from the MSU Black Faculty, Staff, and Administrators Association.¹¹³ On December 13, 2023, an MSU student filed a complaint with the Higher Learning Commission (“HLC”) alerting the HLC to recent racial incidents at MSU and specifically accusing Dr. Lipton of putting student safety at risk through his use of the term “mob” in The Detroit News article.¹¹⁴ At the December 14, 2023, public Board meeting, Dr. Lipton issued a public apology for his use of the term “mob,” but continues to receive emails from students questioning the sincerity of his apology and demanding in-person meetings with him.

Separate from Dr. Lipton’s allegation, Interviewee 10, told Miller & Chevalier that there was a meeting on November 1, 2023, between students, Chair Vassar, and Trustee Denno, during which Trustee Denno made several comments to the students regarding Dr. Lipton. Those comments were captured in the contemporaneous recordings provided to Miller & Chevalier. Miller & Chevalier asked Trustee Denno about the following statements:

- ▶ “The other thing you can do to help us [referring to himself and Chair Vassar], at least for me, is attack Jack Lipton, the Chair of the Faculty Senate. I mean this guy called you a mob . . . call him out, call him a racist.” Trustee Denno told Miller & Chevalier that he “probably said that,” adding that he doesn’t “give a shit about Jack Lipton.”
- ▶ Continuing to refer to Dr. Lipton, Trustee Denno also said to students, “This guy is supposed to be independent or non-partisan and he’s a tool of the Administration and he’s a tool to begin with.” Trustee Denno told Miller & Chevalier, “I don’t give two shits about Jack Lipton But he is a tool, so I probably did [make the statement].”

¹⁰⁹ Press Release, NAACP Michigan State Conference Youth & College Division, NAACP Michigan State Conference Youth & College Division Calls on MSU Board Of Trustees to Protect Black & Brown Students (Nov. 2, 2023), https://www.instagram.com/p/CzKeM4-r5WM/?img_index=2.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Press Release, Black Students’ Alliance (Nov. 4, 2023), https://www.instagram.com/p/CzPir3NxIKn/?img_index=1

¹¹³ Letter from MSU Black Fac., Staff, and Adm’rs Ass’n to Jack Lipton, Ph.D., Fac. Senate, Chair et al. (Nov. 14, 2023) (on file with MSU).

¹¹⁴ Draft letter from MSU student to HLC (Dec. 13, 2023) (final version on file with HLC).

Interviewee 10 stated that, following the November 1, 2023, meeting, Trustee Denno continued to contact Interviewee 10 regarding efforts to publicly call out Dr. Lipton as a racist. Interviewee 10 shared text messages reflecting that on November 14, 2023, Trustee Denno provided them with the email address of The Detroit News reporter that published Dr. Lipton's statement. Interviewee 10 asked Trustee Denno about what they should say to the reporter, to which Trustee Denno replied "Lipton=racist." When asked whether he recalled giving any students the names of reporters to contact and telling any students to say "Lipton equals racist," or anything that could be interpreted as such, Trustee Denno said he could not recall. Here again, independent evidence provided to Miller & Chevalier confirms that he made these statements.

On December 13, 2023, an MSU student filed an HLC complaint against the University. The letter states that its purpose is "to express [] concerns regarding the administration of our institution and the safety of its students" claiming that the University runs "on the foundations of racial hatred and discrimination." The letter then draws "attention to specific incidents, particularly" to Dr. Lipton's use of the term "mob," claiming that his use of the term has put the safety of students at risk. The letter also states that the student is "troubled by the alleged claims in the information provided to the Higher Learning Commission" and has "reservations about what may have been conveyed by 'Mr. Lipton'" in the HLC complaint. The letter goes on to discuss HLC criterion and principles of shared governance. Notably, the letter names Chair Vassar and Trustee Denno as the only two Trustees who meet with and support students and criticizes Trustee Scott and Trustee Tebay for not attending "all relevant and important events," adding that that it is "disheartening to hear that our elected representatives may not always be present to address the pressing issues facing our student body."

Interviewee 10 told Miller & Chevalier that Chair Vassar and Trustee Denno pushed students to file the HLC report against Dr. Lipton. Chair Vassar and Trustee Denno denied these allegations claiming that they only advised students to document incidents on campus and that it was ultimately the student's idea to file a HLC report. Miller & Chevalier cannot credit these Trustees' statements over the credible account provided by Interviewee 10, and contemporaneous text messages suggesting that Chair Vassar did coordinate with students to file the HLC report. Notably, in a text message shared with Miller & Chevalier a student reports to others that HLC would not be moving forward with an investigation noting that "Dr. Vassar is quite pissed too."

Analysis

Without addressing the appropriateness of Dr. Lipton's use of the term "mob," the actions of Chair Vassar and Trustee Denno in orchestrating a campaign of personal attacks through student groups and the press suggest that they were primarily motivated by personal animus against Dr. Lipton, likely generated by Dr. Lipton's call for Chair Vassar's resignation. Whatever the motive, the method of their actions did not constructively engage with Dr. Lipton on his word choice and is not consistent with the fiduciary duties of the Trustees to the University. Chair Vassar has raised arguments to Miller & Chevalier that any criticism of their actions or the students' actions is tantamount to chilling—or attacking—their rights to free speech. Miller & Chevalier is highly sensitive about the value of free speech in a wide variety of settings, but particularly on college campuses, which have traditionally been a place where free speech and the exchange of ideas is encouraged. Nothing in this report should be read as an intent to limit legitimate free speech. However, it also must be recognized that this right is not unbounded. Speech that is inciting, harassing, libelous, or slanderous is not condoned or protected.

Accepting employment or certain positions in institutions may also limit a person's right to unfettered free speech, particularly when acting in their official capacity, as was the case when Chair

Vassar and Trustee Denno met with students on November 1, 2023. Notably, when asked whether Chair Vassar and Trustee Denno met with students in their personal capacity or as Trustees, Interviewee 10 stated that at first Interview 10 thought Chair Vassar and Trustee Denno were advising students from a “personal or mentorship perspective, but afterwards [Interviewee 10] realized that it was only in their Trustee role.” Separately, Interviewee 10 stated, certain students felt they were being manipulated by Chair Vassar and Trustee Denno to further their personal agendas.

These statements reinforce Miller & Chevalier’s conclusion that Trustee Denno’s and Chair Vassar’s efforts to direct students to publicly label Dr. Lipton a racist contravene their duties as MSU fiduciaries. As discussed in section. IV.C.2, and outlined in Standard 5 of the Code of Ethics, Chair Vassar and Trustee Denno, as fiduciaries, are duty bound to safeguard MSU’s interests above their own.¹¹⁵ Directing students to speak to the press with the intent to label Dr. Lipton a racist alongside efforts to file complaints with the University’s accrediting body constitutes an overt action to coordinate a potentially harmful outcome to MSU in breach of those duties. Miller & Chevalier does not comment on whether students were within their rights to express their opinions, but the investigation did conclude that Trustee Denno’s and Chair Vassar’s efforts to encourage these students to make specific derogatory statements about Dr. Lipton crossed the line of the Trustees’ obligations to MSU.

Miller & Chevalier further notes that it has received information that the Trustees’ actions have caused a potential harmful outcome for the University as Dr. Lipton has threatened to bring complaints or to file suit against MSU or constituent parts of the University.

F. Presidential Search Leak

The search for MSU’s next president officially launched on May 9, 2023, with the formation of the University’s presidential search committee and ended with the appointment of Dr. Guskiewicz as president-elect on December 8, 2023.¹¹⁶ Beginning on around November 10, 2023, the names of the two final presidential search candidates—Dr. Guskiewicz and Dr. Eighmy—were leaked to the public. The names of the candidates were known only to the Board of Trustees, the Board Secretary, and the search firm, Isaacson, Miller Inc. (“IM”). This raised concerns that the leak came from a Trustee. The OARC instructed Miller & Chevalier to include this leak within the scope of its investigation.

The disclosure of confidential information by a Board member implicates several policies. It would constitute a breach of the Trustee’s fiduciary duty to the University and the State of Michigan.¹¹⁷ It is a violation of the Trustee’s commitment to “maintain and respect the confidentiality of University records and information, including personnel information and student records,” to “not disclose nonpublic information, including privileged attorney/client communications, without proper authorization,” and to “not misuse or exploit for personal benefit any records or information to which [they] obtain special access as a result of [their] position.”¹¹⁸ And finally, disclosure of confidential information may constitute a violation of the Trustee Conflict of Interest Policy that obligates Trustees

¹¹⁵ Code of Ethics ¶ 5.

¹¹⁶ Press Release, MSU, Board of Trustees appoints Kevin M. Guskiewicz as Michigan State University’s next president (Dec. 8, 2023), <https://president.msu.edu/president-elect/press-release.html>.

¹¹⁷ Code of Ethics ¶ 5.

¹¹⁸ *Id.* ¶ 6.

to refrain from using the information obtained in their position to further their own interests, over those of the University.¹¹⁹

Miller & Chevalier’s investigative efforts did not produce evidence sufficient to identify the individual or individuals responsible for the leaks that occurred during the search process.

Summary of Factual Findings

On April 6, 2023, MSU announced the hiring of IM to guide the search process.¹²⁰ In conjunction with IM, the University formed a twenty-nine-member presidential search committee, headed by Trustee Denno and Trustee Scott as Chair and Vice Chair respectively. The committee included a “cross section of the university community” with representatives from “the undergraduate and graduate student body, university faculty, support staff, alums, athletic coaches and state leaders.”¹²¹ Trustee Kelly and Trustee Jefferson also served on the search committee.

The first stage of the presidential search involved the search committee working with IM to identify and “advance a pool of qualified candidates to the Board of Trustees for consideration.”¹²² This stage culminated with the selection of five candidates who were “handed off” to the Board of Trustees to make a final selection. Going forward, the presidential search committee had no further role in or knowledge of the process.

On November 4 and 5, 2023, the Board of Trustees met in Detroit to interview the five candidates. By the end of the weekend, the Board had narrowed the field to Dr. Guskiewicz and Dr. Eighmy. Interviewees uniformly stated that the only individuals present at the meetings and who had knowledge of the two finalists were the Board of Trustees,¹²³ a representative from IM, and the Board Secretary.

In the ensuing days, from November 6 to 10, 2023, the Board and IM conducted additional confidential discussions regarding the finalists. The investigation revealed several events during this same timeframe that suggest information began to leak to individuals in the MSU community before the media reports on November 10, 2023. For example, documentation from the morning of November 6, 2023—less than twenty-four hours after the Board had selected the two finalists—reflects that individuals in the Administration knew the search was down to two candidates. And interview accounts reflect that certain MSU donors may have known about the November 4 and 5, 2023, meetings and that

¹¹⁹ Trustee Conflict of Interest Policy § IV.

¹²⁰ As a condition of its hiring, IM requested, and the Board agreed to work with third parties to develop “Governance Commitments” that would be signed by the Board and the new president upon their selection. IM described this step as essential to the success of the search.

¹²¹ Emily Guerrant, *Full committee named for MSU presidential search*, MSU (May 9, 2023), <https://msutoday.msu.edu/news/2023/full-committee-named-msu-presidential-search>.

¹²² *Id.*

¹²³ Trustee Knake Jefferson did not participate in all of the weekend’s meetings and when she did so, her participation was via Zoom.

the Board was down to two finalists. The investigation also received uncorroborated reports that the finalists were discussed at an MSU basketball game on November 9, 2023.¹²⁴

The search then suffered from multiple media reports disclosing confidential information including:

- a. On November 10, 2023, at 5:17pm, David Harns posted a message on Spartans Illustrated, writing, “Apparently, the [MSU] presidential search is down to two finalists (from the North Carolina area and the Texas area) Those with knowledge of the situation are leaning towards the NC one.”¹²⁵
- b. At 5:48pm the same day, Justin Thind reported on Spartan Tailgate, “Can confirm this and also shed some additional light based on what Corey & I have found out in recent weeks: One of those two individuals is [] currently a chancellor at a flagship university, while the other individual is a president [at] a smaller D1 university. Both have a background of fund-raising Think that’s all we’re at liberty to reveal right now, as they don’t want any leaks.”¹²⁶
- c. On November 15, 2023,¹²⁷ The State News published a story, titled “MSU board was down to two finalists in president search, but one already dropped out.” The article also noted that “the two finalists were University of North Carolina at Chapel Hill Chancellor Kevin Guskiewicz and University of Texas at San Antonio President Taylor Eighmy, sources with knowledge of the deliberations told The State News Wednesday morning.” The State News reached out to both candidates. According to The State News, John Isaacson, Chair of IM, stated that Dr. Eighmy withdrew his name from the search shortly after the requests for comment were made.¹²⁸

¹²⁴ Interview accounts indicate that two additional breaches of confidentiality occurred earlier in the search process. In early fall 2023, an individual at the University of Texas at San Antonio (“UTSA”) learned that Dr. Eighmy was under consideration for the MSU presidential position. And in October 2023, an individual in the San Antonio business community also learned of Dr. Eighmy’s candidacy. According to interview accounts, this second leak resulted in many in the UTSA community becoming aware of Dr. Eighmy’s consideration for the position. In both instances, Dr. Eighmy voiced his concerns regarding the leaks to relevant individuals involved in the MSU presidential search. At the time of the aforementioned breaches, all twenty-nine members of the MSU search committee had knowledge of Dr. Eighmy’s candidacy, and as such, could have been responsible for the leak. Although Miller & Chevalier’s investigation focused on the leaks that occurred in November and December 2023 that more directly implicated the Board of Trustees, the probe also considered these unauthorized disclosures of Dr. Eighmy’s candidacy. Ultimately, the investigation did not find evidence to prove the search committee member’s identity, or anyone else, responsible for these leaks.

¹²⁵ David Harns, Spartan Illustrated Message Board (Nov. 10, 2023, 5:17 PM), https://www.millerchevalier.com/sites/default/files/resources/Misc/Report_Spartan-Illustrated.pdf

¹²⁶ Justin Thind, SpartanTailgate (Nov. 10, 2023, 5:48 PM), https://www.millerchevalier.com/sites/default/files/resources/Misc/Report_Spartan-Tailgate.pdf

¹²⁷ Earlier that day, The State News had submitted a FOIA request to MSU requesting all Trustee emails relating to the two finalists.

¹²⁸ Alex Walters & Theo Scheer, *MSU board was down to two finalists in president search, but one already dropped out*, The State News (Nov. 15, 2023), https://statenews.com/article/2023/11/msu-board-of-trustees-down-to-two-finalists-in-president-search-but-one-already-dropped-out?ct=content_open&cv=cbox_featured.

- d. On December 5, 2023, NC Newsline published an article on Dr. Guskiewicz’s decision to consider the MSU presidency. According to NC Newsline, reporters reached a member of MSU’s Board of Trustees, who “asked that their name be withheld in order to discuss internal board debate.” The article states that the Trustee notes, “If you look at what has been going on and the way that every crisis is used as a political cudgel, you can see why we’ve had a problem hiring and retaining leaders here.”¹²⁹
- e. Then, at 3:17pm on December 6, 2023, reporter David Jesse tweeted: “BREAKING: Kevin Guskiewicz, the current chancellor at UNC-Chapel Hill, will be announced as Michigan State University’s president at 8 a.m. Friday meeting. Meeting notice to be issued tomorrow morning.”¹³⁰
- f. At 5:25pm on December 6, 2023,¹³¹ The Detroit News reported how the Board was expected to vote on the presidential appointment. “A source close to the presidential search said Guskiewicz is excited to come to MSU and a unanimous vote of the [Board] is expected.”¹³²

Specific to the review of the presidential search leak, Miller & Chevalier’s investigation steps included (1) interviews of all eight Trustees, a representative from IM, the Board Secretary, and other relevant University employees; (2) outreach to several media members, two of whom spoke on background; (3) review of over 5,000 records from the relevant time period, including emails and text messages obtained from cell phone reviews; and (4) social media and media reporting research.¹³³ Miller & Chevalier also analyzed Trustees’ relationships with the media and various motives for the leaks, and considered why the initial November 10, 2023, leaks came through sports websites primarily concerned with MSU athletics.

Based on these efforts, Miller & Chevalier concludes that it is likely a Board of Trustee member or members were responsible for the leak to the media of the two finalists and their identities. However, the investigation was unable to identify sufficient evidence to determine which Trustee(s) was the source of the leak. As noted, the universe of individuals with the knowledge of the two finalists during the relevant timeframe was limited to the eight trustees, a representative from IM, and the Board Secretary. All ten denied disclosing the confidential information to anyone outside the group.¹³⁴

¹²⁹ Joe Killian, *supra* note 3.

¹³⁰ David Jesse (@reporterdavidj), X (Dec. 6, 2023, 3:17 PM), <https://twitter.com/reporterdavidj/status/1732494487899791407?s=20>.

¹³¹ Board of Trustees appoints Kevin M. Guskiewicz as Michigan State University’s next president, *supra* note 116.

¹³² Kim Kozlowski, *MSU poised to select UNC’s Guskiewicz as next president*, The Detroit News (Dec. 6, 2023), <https://www.detroitnews.com/story/news/local/michigan/2023/12/06/msu-board-to-vote-on-guskiewicz-as-next-president-friday/71805307007/>.

¹³³ As noted in section II above, Chair Vassar and Trustee Denno declined Miller & Chevalier’s repeated requests to cooperate in the review of their cell phone messages.

¹³⁴ Many Interviewees speculated to Miller & Chevalier on the possible source and potential motivation for the leaks. Three general theories were set forth: (1) a faction of the Board preferred Interim President Woodruff to the two finalists and a member of that faction leaked the identities of the finalists to frustrate the search and re-open the pool of candidates; (2) the leak was merely the product of a Trustee accidentally oversharing confidential information, and in particular, may have occurred in the context of the next president’s impact on the concurrent search for a football coach, or (3) a former Trustee with ties to athletics, and to Spartan Tailgate, and who has

continued on next page

One media member who spoke with Miller & Chevalier said they received the information from a reliable, albeit anonymous source. The second media member refused to reveal the identity of their source but stated that their source received the information from a Board member. Specifically, the reporter noted that they spoke with their source twice, on November 9 and 10, 2023, and their source may have received the information at a football game.¹³⁵ Miller & Chevalier found the level of detail provided weighed in favor of the reporter’s credibility. Further, multiple Interviewees noted that the media member is well-sourced within the University. The investigation also concluded that, based on credible accounts and a lack of identifiable motives, that IM and the Board Secretary are unlikely to be responsible for the confidentiality breaches. Taken together, the evidence shows it is likely that a Trustee or more than one Trustees were responsible for the leak to the media.¹³⁶

G. Allegations Related to Trustees Violating the Trustee Conflict of Interest Policy

During the investigation, Miller & Chevalier received concerns related certain current and former Trustees violating the Trust Conflict of Interest Policy. Miller & Chevalier discusses those allegations below.

1. Allegation that Trustee Scott has a Conflict of Interest

Chair Vassar alleges that Trustee Scott failed to disclose a conflict of interest related to her property development partnership with Former Trustee 2. She further alleges that Trustee Scott’s relationship with Former Trustee 2 influenced her vote on the release of the Nassar documents.

Summary of Factual Findings

In her interview, Trustee Scott informed Miller & Chevalier that during a Board working session some time in 2019 she discussed the property development in question with the Board and the General Counsel, when Trustee Scott and Former Trustee 2 were both on the Board of Trustees. The General Counsel confirmed Trustee Scott’s account. The General Counsel explained to Miller & Chevalier that “[t]here is nothing that prevents a Trustee from getting into business with another Trustee,” but also noted that “if there was quid pro quo and vote trading, that would be a conflict.” Miller & Chevalier has not identified evidence of a quid pro quo or vote trading. Chair Vassar was not on the Board of Trustees at the time of the alleged conflict was discussed and did not purport to have first-hand knowledge.

close personal relationships to several current Trustees served as a conduit for the leaks, either intentionally or unintentionally. Our investigation uncovered no independent evidence to support any of these theories.

¹³⁵ Miller & Chevalier was unable to confirm which, if any, Trustees attended MSU football games in the relevant timeframe.

¹³⁶ Similarly, the investigation concluded that a Trustee was likely responsible for (1) providing anonymous quotes to the December 5, 2023, NC Newline article, particularly since the article states that a Trustee was the source, and (2) disclosing that a unanimous vote on Dr. Guskiewicz was expected, either directly or indirectly, to The Detroit News for its article on December 6, 2023, given knowledge of the vote’s likely outcome was reserved to the Board. The investigation was unable to reach any definitive conclusions regarding David Jesse’s December 6, 2023, tweet that reported Dr. Guskiewicz would be announced on Friday, December 8, 2023, at 8:00am. At that point, both University employees and Board members were aware of and involved in the scheduling of the announcement and could have been responsible for providing this information to the media.

Analysis

Miller & Chevalier conducted focused searches of electronic data and asked questions of interviewees as having potential knowledge. However, events related to this allegation took place several years ago and recollections were not entirely clear. Miller & Chevalier did not identify sufficient evidence to support this allegation. Moreover, the opinion of the General Counsel is final with respect to determining compliance with the Trustee Conflict of Interest Policy.¹³⁷

2. Allegation that Chair Vassar Received Gifts from Mel Tucker that Other Trustees Did Not Receive.

Former Trustee 1 alleged that Chair Vassar received gifts from Mr. Tucker when he was the MSU football coach, which included additional field passes, athletic shoes, and football gear, that other Trustees did not receive.

Summary of Factual Findings

Miller & Chevalier heard interview accounts that all Trustees have received gifts of University-branded merchandise and athletic gear from MSU Athletics but that Chair Vassar has requested University-branded sports gear more frequently than other Trustees. One Trustee stated that Chair Vassar “definitely got shoes” from MSU Athletics during a football scrimmage in August 2021 and that “it seemed like she had gotten some [shoes] before, and maybe some other gear.” The same Trustee also stated that “Trustees will all get gifts.” Another Trustee stated that Chair Vassar “gets sneakers all the time” but was not certain who provided them. Interviewee 11 remarked that Trustees would “occasionally” receive gifts of sports equipment if “there was some unique merch”; otherwise, any gifts would have to be purchased at the bookstore or would be the result of a specific Trustee’s relationship with someone in the Athletics Department or associated with teams. A third Trustee explained that they personally have “never asked [for gear]. It’s not for purchase because it’s stuff Nike sends for all the student athletes. I know they could go and take it. I’m not sure I can go shopping in the warehouse.” At least one interviewee recalled an unnamed Trustee complaining that there should be athletic gear (“swag”) available in the Trustee’s hotel room when Trustees are invited to football games. The interviewees perceived the Trustee’s complaint as an indirect request for athletic gear.

Analysis

Miller & Chevalier’s investigation did not identify sufficient evidence to corroborate the allegation that Chair Vassar received gifts from Mr. Tucker outside of what other Trustees have also received. Further, Miller & Chevalier is not aware of any Trustee policy that prohibits Trustees from accepting nominal gifts or sports-related merchandise from MSU Athletics or other university departments.

3. Allegations that Vassar’s role at Wayne State University Raises a Conflict of Interest

An interviewee raised an allegation with Miller & Chevalier that Chair Vassar’s role at Wayne State University presents a conflict of interest with her role on MSU’s Board of Trustees.

¹³⁷ Trustee Conflict of Interest Policy § IX.

Summary of Factual Findings

Chair Vassar joined Wayne State University's faculty on September 21, 2022, where she is a Professor of Educational Leadership and Policy Studies. Additionally, Wayne State University's website notes that Chair Vassar is a "special advisor to the Office of the Provost on Black student success in K-12 education and public schools in Detroit."¹³⁸

Analysis

On January 21, 2023, the OARC received an anonymous allegation similar to the one more recently raised in the investigation. On August 21, 2023, the OARC consulted with the General Counsel and determined that, based on the information available at the time, Chair Vassar's position did not raise conflict of interest concerns. That finding was premised on the fact that Chair Vassar's role at Wayne State University did not involve administrative responsibilities, authority regarding budgeting or state appropriations, economic interest in contracts related to MSU, and because Chair Vassar was not aware of any competing contracts at Wayne State University.

Miller & Chevalier did not reinvestigate these allegations and relies on the OARC's finding that the conflict of interest allegation is unsubstantiated. Notably, however, to the extent that Chair Vassar's role has since changed, she may have access to confidential information at competing universities. Given this circumstance, Miller & Chevalier highlights the importance of monitoring for actual conflicts or the appearance of any conflicting interest in fulfilling Chair Vassar's Board duties.

4. *Trustee Denno Overreach Related to a Contract and a former State Representative*

During the investigation, Miller & Chevalier identified an email that raised concerns about Trustee Denno's involvement in Administration matters, and in particular, the University's contracting process.

Summary of Factual Findings

Specifically, the investigation identified an email from July 4, 2023, in which Trustee Denno received a draft consulting agreement in his personal email account from a former member of the Michigan House of Representatives ("Former Representative") regarding an MSU-Detroit initiative. Another individual, a Detroit-area consultant and former candidate for U.S. Congress ("Former Candidate"), was also on the email correspondence. After revising the agreement, Trustee Denno sent the document to Interviewee 6. Trustee Denno then forwarded the email chain to Chair Vassar stating, "I'm looping in Dr. Rema, since this was her idea."¹³⁹ An employee from MSU's Procurement Office signed the resulting agreement on September 15, 2023, though it is unclear why the agreement had an effective date of July 10, 2023. MSU hired the Former Representative through the Former Candidate's consulting firm to provide a written analysis related to the MSU-Detroit initiative.

¹³⁸ *Wayne State University College of Education welcomes five new faculty members*, Wayne State University (Sept. 21, 2022), <https://education.wayne.edu/news/wayne-state-university-college-of-education-welcomes-five-new-faculty-members-49244>; *Dr. E. Rema*, Wayne State University, <https://education.wayne.edu/profile/hm7297> (last visited Feb. 23, 2024).

¹³⁹ Although Trustee Denno used his personal email account, the email chain was forwarded to Chair Vassar's MSU Trustee email account and therefore was included in the materials reviewed during the investigation.

As background, Interviewee 6 recalled in a meeting that a Detroit official noted Interviewee 6 and his two counterparts lacked diversity. Interviewee 6 spoke with Trustee Denno who recommended outreach to the Former Representative, for whom Trustee Denno had previously worked. Although Interviewee 6 acknowledged that the Former Representative had a criminal history, Interviewee 6 said “he made a bad decision, we talked about redemption, giving people a second chance is difficult and inadequately done.” In his interview, Trustee Denno admitted he was involved in facilitating the relationship, explaining that he recommended the Former Representative due to his connections to the Detroit community. Trustee Denno denied having knowledge of the cost or parameters of the agreement. Trustee Denno also initially denied he assisted in defining the scope of the consulting agreement, until confronted with email evidence to the contrary. When asked about his comment that the agreement was Chair Vassar’s idea, Trustee Denno affirmed it was his idea, and stated, “maybe I was throwing her a bone . . . I wanted [Interviewee 6] to know Dr. Rema was a leader in Detroit.” In her interview, Chair Vassar also stated the agreement was not her idea and mentioned that Trustee Denno and the Former Representative had previously worked together.

The investigation also found evidence that the Former Representative may have provided transportation to the Board’s October 27, 2023, public meeting, for supporters to protest “MSU’s attempt to remove Chair Vassar.”¹⁴⁰ Trustee Denno denied any knowledge of the Former Representative’s involvement in such efforts. Chair Vassar also denied any involvement in facilitating transportation of supporters for the Board meeting, stating “No, for that bus, no. But when people ask how to help [generally], I would say, well you can come out.”

Analysis

Trustee Denno’s actions violate Standard 3 and Standard 7 of the Code of Ethics. Specifically, Trustee Denno involved himself in administrative matters by recommending a consulting firm and then revising the scope of work of the agreement at the Former Candidate’s request. For example, Trustee Denno advised the firm, “I think we need to say that your team will be providing the university a WRITTEN analysis of our strengths and weaknesses in Detroit” and “I also think you need a section that explains HOW you will determine Detroiters’ needs. Listening sessions, meetings with grassroots leaders, meetings with elected officials, using Councilman []’s report, looking at other documents, etc.” This input constitutes Board overreach into administrative matters in conflict with Standard 7 of the Code of Ethics, and also constitutes an appearance of impropriety given Trustee Denno’s prior work with the Former Representative, now the recipient of consulting work from the University.¹⁴¹ At face value, Trustee Denno’s explanation—that Interviewee 6 asked for his recommendation and he provided his recommendation based on the Former Representative’s connections—seems to be a reasonable defense to any impropriety. However, Trustee Denno revising the scope of the consulting agreement in support of the consulting firm and the Former Representative, for whom Trustee Denno had previously worked, makes his actions a violation of Standard 3 of the Code of Ethics and Section II(b) of the Trustee Conflict of Interest Policy.¹⁴²

¹⁴⁰ Cynthia A. Johnson, Facebook (Oct. 25, 2023), https://www.millerchevalier.com/sites/default/files/resources/Misc/Report_WhatsAppImage_2023-11-30.pdf.

¹⁴¹ Code of Ethics ¶¶ 3, 7.

¹⁴² *Id.* ¶ 3; Trustee Conflict of Interest Policy § II(b).

H. Allegation Related to the Drafting and Publication of Trustee Scott's Letter

In her November 3, 2023, email to the OARC and the ARC Committee, Chair Vassar raised concerns regarding the “release of [Trustee Scott’s October 22, 2023] letter to media outlets.” In her email, Chair Vassar also raised concerns about “Trustee Knake-Jefferson’s participation in drafting [Trustee Scott’s] letter.” Further in her public response to Trustee Scott’s letter, Chair Vassar also implied that Trustee Scott had breached the Trustee policy related to Settlement of Claims and Litigation by referencing confidential information in her letter.¹⁴³

Summary of Factual Findings

In her letter, Trustee Scott acknowledges that making her allegations public could constitute a breach of the Code of Ethics stating that:

[S]ome might contend that in sharing the multitude of incidents regarding Chair Vassar’s conduct, I am violating the very Board of Trustees Code of Ethics and Conduct I repeatedly cite in this statement. However, as a Trustee and as an attorney, I must weigh the harm of sharing these internal issues against the standards of transparency we are tasked with upholding. If I must choose one, then I choose the latter.

In response to Chair Vassar’s allegation that other Trustees, including Trustee Knake Jefferson, provided input into Trustee Scott’s letter, Trustee Scott, informed Miller & Chevalier that prior to publishing her October 22, 2023, letter, she previewed the contents of the letter for all Trustees, except Chair Vassar and Trustee Denno, on a Zoom call, but did not provide the Trustees on the call with a copy of the letter. Specifically, regarding Trustee Knake Jefferson’s contribution to the letter, Trustee Scott denied that Trustee Knake Jefferson had provided any input on the interpretation of the Trustee Code of Ethics or other Trustee policies that she included in the letter.

In her interview with Miller & Chevalier, Trustee Knake Jefferson confirmed Trustee Scott’s account of the Zoom call. Trustee Knake Jefferson indicated that Trustee Scott had asked her and other Trustees to fact check the letter. Trustee Knake Jefferson recalled that she reviewed several versions of Trustee Scott’s letter and provided feedback. Reflecting on her motivation to review the letter, Trustee Knake Jefferson explained, if “[Trustee Scott]’s going public, there is a duty to the University to understand what [Trustee Scott] is going to say.” Trustee Knake Jefferson further stated that “it’s [Trustee Scott’s] letter,” and “[Trustee Scott] didn’t write anything or take anything out because I told her to . . . I disagree with the route she took—I wouldn’t have written a statement like that.”

Analysis

The Code of Ethics makes clear under Standard 6 that Trustees “will not disclose nonpublic information, including privileged attorney/client communications, without proper authorization.”¹⁴⁴ Trustee Scott’s letter references confidential information, including the substance of MSU General

¹⁴³ Kim Kozlowski, *MSU board chair to recommend culture assessment after calling claims against her ‘untruths’*, The Detroit News (Oct. 23, 2023), <https://www.detroitnews.com/story/news/local/michigan/2023/10/23/msu-board-chair-calls-claims-against-her-in-call-for-removal-fabrications-misstatements/71296807007/>; Setting the Record Straight, *supra* note 26.

¹⁴⁴ Code of Ethics ¶ 6.

Counsel and the Board’s outside counsel’s advice related to the Dr. Gupta settlement when she, for instance, writes “Dr. Vassar unilaterally (without discussing with the [Board of Trustees]) released the [QE] Report against the advice of MSU’s General Counsel and the Quinn Emanuel attorneys, who recommended that release of the [QE] Report be delayed after Gupta named the [Board of Trustees] in his lawsuit against the University.” Miller & Chevalier’s investigation did not identify any authorization given to Trustee Scott by General Counsel that permitted her to disclose that attorney-client privileged advice. Absent any such authorization, Trustee Scott’s inclusion of attorney-client privileged advice in her letter violates Standard 6 of the Code of Ethics.

Chair Vassar also alleges that Trustee Knake Jefferson provided input into Trustee Scott’s letter. Although Trustee Knake Jefferson admitted to providing feedback on Trustee Scott’s letter, Miller & Chevalier did not otherwise identify evidence that Trustee Knake Jefferson drafted any portions of the letter containing nonpublic information that would constitute a violation of Standard 6.

I. Additional Allegations that Miller & Chevalier Did Not Corroborate

As noted in section II, Chair Vassar sent additional allegations to the OARC and the ARC Committee on November 3, 2023. Similarly, Miller & Chevalier received several allegations, during interviews or in writing, from other Trustees, one or more former Trustees, administrators, and other members of the MSU community. Miller & Chevalier carefully analyzed and weighed the merits of each of these allegations. In examining each allegation, Miller & Chevalier considered initially whether the issues raised (1) were previously investigated by the OARC or reviewed by the General Counsel’s Office, (2) were the subject of a separate outside counsel investigation, or (3) are currently under review by the HLC. If so, Miller & Chevalier did not endeavor to (re)investigate these additional allegations.

Allegations raised by Chair Vassar and others have been addressed throughout this investigation report.¹⁴⁵ However, some allegations raised to Miller & Chevalier were general in nature or lacked sufficient detail. Where possible, Miller & Chevalier conducted focused searches of electronic data. In several instances, Chair Vassar and others were unable to provide sufficient specificity to allow Miller & Chevalier to probe the merits of allegations beyond asking questions to Interviewees identified as having potential knowledge.

In these instances, Miller & Chevalier determined there was insufficient grounds to proceed with additional investigation steps.

V. CONCLUSIONS

Miller & Chevalier substantiated some, but not all the allegations that were included in its investigation. Further, for some allegations, Miller & Chevalier corroborated facts, but did not find violations of Trustee policies and the Bylaws. But in some of those instances, Miller & Chevalier found that the conduct in question, while not a violation of Trustee policies or the Bylaws, nevertheless fell short of the conduct expected of Trustees and fiduciaries of a public institution like MSU.

¹⁴⁵ See *supra* section IV.C.1. (Chair Vassar intended to exclude the Interim President and the Administration from an event at Cowles House on October 20, 2023); *supra* section IV.A.1 (Alumni and former MSU Foundation Board member Alec McAree was in contact with Vassar concerning a settlement from early 2023 on. Alumni Kim Popovits may also have been involved in Gupta settlement negotiations with Vassar).

Where Miller & Chevalier substantiated the factual allegations, it premised its findings on objective and independent evidence identified through its review of documents and electronic data (including email and cell phone data) or submitted to Miller & Chevalier by interviewees. Miller & Chevalier also relied on statements by individuals with knowledge of each relevant allegation. In its consideration of statements from interviewees, Miller & Chevalier made assessments of individual credibility, considering factors such as whether statements aligned or conflicted with facts known to Miller & Chevalier through other independent evidence, the internal consistency of statements made by each Interviewee to Miller & Chevalier, and the transparency and forthcomingness of Interviewee's responses. In particular, because of the conclusions reached, it is important to note that while both Chair Vassar and Trustee Denno provided reliable statements to Miller & Chevalier on key elements of this investigation, their credibility was at times compromised by equivocation, flat-out denials or attempted explanations that ran contrary to facts established through electronic data, documentation, and statements offered by other sources. These assessments were part of what Miller & Chevalier considered in reaching its findings of fact. Trustee Denno and Chair Vassar also declined to cooperate in the cell phone review. Miller & Chevalier afforded Chair Vassar and Trustee Denno, through their counsel, the opportunity to self-select cell phone data relevant to the investigation, but neither of them did so.

Only after determining and weighing factual support for and against each allegation, Miller & Chevalier analyzed whether the facts and any individual's conduct resulted in or constituted a violation or violations of Trustee policies or the Bylaws. The details and substance of Miller & Chevalier's findings are set forth in this report. Allegations for which Miller & Chevalier did not substantiate or for which Miller & Chevalier did not find that the conduct violated Trustee policies or the Bylaws are not included in this summary.

Miller & Chevalier's conclusions about the allegations for which facts were substantiated and which were found to constitute a violation of Trustee policies or the Bylaws are summarized here for convenience and to facilitate evaluation of the appropriate recommended corrective action.

Allegations Involving the Conduct of Chair Vassar and Trustee Denno:

Of the allegations raised in the investigation, the ones of most concern to Miller & Chevalier are claims that Chair Vassar and Trustee Denno retaliated against Interviewees and claims that they undertook to launch personal attacks against Interim President Woodruff and the Faculty Senate Chair, Dr. Lipton.

- ▶ Independent Evidence Reflecting Statements Related to Interim President Woodruff
 - The investigation established that Chair Vassar and Trustee Denno participated in a meeting with students in which they provided students with confidential and inaccurate information that was not in MSU's interest to provide in violation of Standard 5 of the Code of Ethics and encouraged student actions intended to embarrass and unsettle Interim President Woodruff in violation of Standard 8 of the Code of Ethics.
- ▶ Allegation of Retaliation: Dr. Jack Lipton
 - The investigation established that Chair Vassar and Trustee Denno encouraged a campaign of personal attacks against Dr. Lipton, MSU Faculty Senate Chair, by student groups and the press. The evidence suggests that their actions were primarily motivated by personal animus against Dr. Lipton, likely due to Dr. Lipton's call for Chair Vassar's

resignation. But whatever the motivation, this conduct breached Chair Vassar's and Trustee Denno's fiduciary duties under Standard 5 of the Code of Ethics as Trustees to the University because these actions have resulted in a potential harmful outcome for the University by way of potential litigation by Dr. Lipton against MSU or constituent parts of the University directly involving their actions.

These actions are contrary to the Code of Ethics and the duties of a fiduciary and warrant referral to the Governor for review and consideration pursuant to MCL 168.293.

Allegations Involving the Conduct of Chair Vassar:

- ▶ Allegation that Chair Vassar Negotiated Settlement Terms with Dr. Gupta
 - The investigation corroborated the allegation that Chair Vassar participated in at least one settlement negotiation with Dr. Gupta and engaged with the Board's outside counsel to prepare a purported Board statement presented to Dr. Gupta as part of a potential settlement. Chair Vassar undertook these actions without Board knowledge and of Standards 7 and 9 of the Code of Ethics.
- ▶ Allegation that Chair Vassar Requested that the Michigan Department of Attorney General Release Privileged Documents from the Larry Nassar Matter
 - The investigation corroborated the allegation that Chair Vassar independently and separately met with the Department of Attorney General and that these interactions resulted in a request for the Board to waive attorney-client privilege over the Nassar Documents, in opposition to MSU's prior and current position that it would not waive the privilege. This conduct violates Article 13 of the Bylaws as well as Standard 7 of the Code of Ethics.
- ▶ Allegation that Chair Vassar Interfered with the SRMC Report Findings
 - The investigation did not substantiate the allegation that Chair Vassar inappropriately suggested that SRMC revise findings in its report, but it did find that, with respect to the allegations regarding conduct of Chair Vassar and other Trustees following the February 13, 2023, shooting, Chair Vassar's specific actions, as detailed above, encroached on matters reserved for the Administration and therefore was inconsistent with Article 4 of the Bylaws as well as the Code of Ethics commitment in Standard 7 to "avoid involvement in administrative matters not subject to the direct authority of the Board."
- ▶ Allegation that Chair Vassar Traveled on an MSU Donor's Private Jet for University Business
 - It is undisputed that Chair Vassar accepted a private jet flight and courtside tickets from Donor A for herself and her daughter. The investigation also established that on a separate occasion, Chair Vassar accepted tickets for courtside seats from a separate MSU donor. Both occasions violated Standard 4 of the Code of Ethics, which states that Trustees "will not accept special benefits or anything of value for [themselves] or others in consideration of performing [their] duties"¹⁴⁶ The incidents above also violate the Trustee Conflict of Interest Policy, which prohibits even the appearance of a conflict of

¹⁴⁶ Code of Ethics ¶ 4.

interest, particularly relating to Donor A as he was in discussions with MSU to obtain trademark rights for his NIL collective.

- ▶ Allegation that Chair Vassar Participated in Donor A’s Trademark/NIL Negotiations
 - The investigation corroborated the allegation that Chair Vassar inserted herself in negotiations between MSU and Donor A related to Donor A’s use of MSU trademarks for Donor A’s NIL collective. Chair Vassar’s conduct violated Article 7 of the Bylaws and Standard 3 of the Code of Ethics.
- ▶ Allegation of Retaliation: Interviewee 9
 - Although the investigation did not corroborate Interviewee 9’s allegation of retaliation, Chair Vassar’s statement to Miller & Chevalier that she will not work with Interviewee 9 because they made a complaint about her, violates Standard 8 of the Code of Ethics with respect to its prohibition against retaliation.

The findings summarized above, though individually varying in degrees of severity, collectively establish a pattern of behavior that reflects a lack of appreciation by Chair Vassar for the principles underlying the Standards defined in the Code of Ethics and disregard for the Bylaws, the Trustee Conflict of Interest Policy, and core principles of shared governance.

Allegations Involving the Conduct of Trustee Denno:

- ▶ Allegation Involving Interference with SRMC Report
 - The initial allegation stated that Chair Vassar inappropriately suggested that SRMC revise findings in its report. However, through its investigation, Miller & Chevalier substantiated that Trustee Denno was actually the person attempting to exert influence over SRMC to change its findings. This conduct was a breach of Standard 8 of the Code of Ethics.
- ▶ Independent Evidence Reflecting Statements Related to Interim President Woodruff
 - As discussed above in reference to Chair Vassar’s conduct, the investigation established that Chair Vassar and Trustee Denno participated in a meeting with students in which they provided students with confidential information that was not in MSU’s interest to provide and encouraged student actions intended to embarrass and “terrify” Interim President Woodruff.
- ▶ Allegation of Retaliation: Dr. Jack Lipton
 - As discussed above in reference to Chair Vassar’s conduct, the investigation established that Chair Vassar and Trustee Denno encouraged personal attacks against Dr. Lipton, MSU Faculty Senate Chair, by student groups and the press. The evidence suggests that their actions were primarily motivated by personal animus against Dr. Lipton, likely due to Dr. Lipton’s call for Chair Vassar’s resignation. But whatever the motivation, this conduct breached Chair Vassar’s and Trustee Denno’s fiduciary duties as Trustees to the University because these actions have resulted in a potential harmful outcome for the University by way of potential litigation by Dr. Lipton against MSU or constituent parts of the University directly involving their actions.

Allegation Involving the Conduct of Trustee Scott:

Miller & Chevalier substantiated a violation of the Code of Ethics regarding the Trustee Scott's dissemination to the press and the public of her letter, which included references to confidential and privileged attorney/client communications that she did not have authority to disclose. In that regard, Trustee Scott's decision to make her letter public violated Standard 6 of the Code of Ethics. Miller & Chevalier appreciates the courage it takes to publicly denounce misconduct, especially in light of the tangible and personal repercussions that Trustee Scott has suffered. Nevertheless, if the Code of Ethics is to have any meaning, its Standards must be applied uniformly, particularly when it involves an issue as important as the fiduciary's obligation to preserve the attorney-client privilege. Thus, some sanction may be appropriate.

* * *

Finally, in addition to conclusions about the substance of the allegations and the determination of when Trustee policies, the Code of Ethics, and the Bylaws were violated, Miller & Chevalier also identified opportunities for MSU and the Board of Trustees to enhance their current policy environment and governance protocols, which are included in the recommendations.

In light of our findings, Miller & Chevalier provides recommendations below.

VI. RECOMMENDED CORRECTIVE ACTION

As provided in our investigation report, MSU's Office of Audit, Risk and Compliance ("OARC"), in consultation with MSU's General Counsel and the Trustee Committee on Audit, Risk and Compliance ("ARC Committee") determined that it was appropriate to engage Miller & Chevalier to conduct an independent investigation. Thus, Miller & Chevalier's report, including recommendations for corrective action, will be provided to the OARC and the ARC Committee.¹⁴⁷

The MSU Board of Trustees Code of Ethics and Conduct states that "Purported violations . . . will be appropriately investigated . . . and a report will . . . includ[e] recommendations for corrective action with regard to confirmed violations. Recommended corrective actions may range from censure to referral to the Governor for review and consideration pursuant to MCL 168.293."¹⁴⁸

Based on our findings of fact and analysis, and as summarized in our Conclusions,¹⁴⁹ Miller & Chevalier's recommended corrective action for Chair Vassar's violations of Board policies and Bylaws is referral to the Governor for review and consideration pursuant to MCL 168.293.¹⁵⁰

Based on our findings of fact and analysis, and as summarized in our Conclusions, Miller & Chevalier's recommended corrective action for Trustee Denno's violations of Board policies and Bylaws is referral to the Governor for review and consideration pursuant to MCL 168.293.¹⁵¹

¹⁴⁷ See *supra* section I.

¹⁴⁸ See Code of Ethics § Report and Enforcement; see also Mich. Const. art. V, § 10 (additional information on removal or suspension of public officers).

¹⁴⁹ See *supra* section V.

¹⁵⁰ See Code of Ethics § Report and Enforcement.

¹⁵¹ *Id.*

Based on our findings of fact and analysis, and as summarized in our Conclusions, Miller & Chevalier’s recommended corrective action for Trustee Scott’s violation of Standard 6 of the MSU Board of Trustees Code of Ethics and Conduct is no more than censure.¹⁵²

Miller & Chevalier does not recommend corrective action for any other individual.

The Board of Trustees has taken recent steps to bolster its governance and professional development. Representative examples include:

- ▶ The Board’s engagement with the Association of Governing Boards of Universities and Colleges (“AGB”)¹⁵³ and with The Center for Applied Research, Inc. (“CFAR”),¹⁵⁴ a management consulting firm, to develop Governance Commitments to “clarify the Board’s engagement with the University community”;
- ▶ Two meetings with Marquis Leadership, a coaching and leadership development consultancy, including a session at the Board’s 2023 retreat;
- ▶ A substantial revision of the Board’s Bylaws;
- ▶ At least two governance sessions with AGB; and
- ▶ Creation of the Board’s Professional Development Plan.

Unfortunately, in this investigation, Miller & Chevalier learned that certain Trustees did not participate in some of these governance or professional development sessions. In the later stages of this investigation, Miller & Chevalier observed behaviors and conduct inapposite to the Governance Commitments that the Board recently adopted, and that each Trustee individually signed and agreed to follow. Notably, one Trustee acknowledged being frustrated with “the amount of money we waste on governance, because no one pays attention to it.”

Miller & Chevalier’s recommendations for corrective action and enhancements are based on our findings and observations in our investigation and reflect areas of Trustee policy, preparedness, and operation which would benefit from improvement. Each Trustee must participate in these efforts as an MSU fiduciary.

Miller & Chevalier recommends:

1. The Board should implement its Professional Development Plan and require the participation of each Trustee.
2. The Board should consider undergoing a comprehensive governance review by an expert outside consultant to assess its governance practices.
3. Building upon the Governance Commitments, the Board should consider developing and implementing a set of Board-level procedures that describe with sufficient detail how the

¹⁵² *Id.*

¹⁵³ *About AGB*, The Association of Governing Boards of Universities and Colleges, <https://agb.org/about-us/> (last visited Feb. 27, 2024).

¹⁵⁴ *About*, The Center for Applied Research, Inc., <https://www.cfar.com/about-cfar/> (last visited Feb. 27, 2024).

Board and each Trustee are to engage with the Administration and the University community.

- a. Rationale: Effective Board governance should be disciplined, auditable, and applied to all Trustees equally. Absent such rigor, the University cannot be sure that its model of governance is functioning as intended. Documented procedures will help avoid unchecked discretion in how Trustees exercise their fiduciary duties and engage with the Administration and University community. The procedures should be monitored regularly and tested periodically through audits, to ensure adherence to the Board's Bylaws, applicable policies, and these procedures.
 - b. Procedure Examples: Document in sufficient detail how the Board and each Trustee (1) reports known or suspected misconduct to the University; (2) makes requests for information of administrators; (3) makes arrangements to attend and participate in University events and meetings; (4) interfaces with faculty, University employees, and student groups; (5) participates in Advancement activities; (6) engages with government officials; (7) prepares speeches or other public remarks; (8) accepts gifts, entertainment, travel, and other things of value (see below); and (9) communicates formally or informally with media.
4. The Board should consider devoting more time and resources toward a cohesive Board of Trustees training program.
- a. Representative Training Subject Areas: (1) Board governance, fiduciary duties, and principles of trusteeship; (2) engagement with the Administration and University community; (3) harassment and non-retaliation; (4) avoiding conflicts and the appearance of conflicts of interest; (5) engagement with media and confidentiality obligations; (6) accepting things of value, including the use of private planes; and (7) endorsements, sponsorships, and advertising.
 - b. Consider additional tailored training for subject matter relevant to each of the Board committees.
 - c. Consider individualized training for the Board Chair, Vice Chair, and the Board Secretary regarding each of their requisite roles and responsibilities.
 - d. Consider formalized and comprehensive governance training for each *new* Trustee as part of their orientation.
5. Building upon Standard 4 of the Code of Ethics and Conduct and the Trustee Conflict of Interest Policy, the Board should consider developing compliance guidelines with respect to accepting things of value, including gifts, athletic gear, meals, entertainment, and travel. The guidelines should prohibit Trustees from accepting travel on private planes unless there is no actual or perceived conflict in accepting such travel, and should communicate that the General Counsel, whose opinion is final with respect to compliance with the Trustee Conflict of Interest Policy, should clear the travel in advance.
6. The Board should consider retaining an independent governance expert to meet with the Board or Trustees, as appropriate. The governance expert would not displace the Board or the Administration's decision-making authority, nor would it displace legal advice from the

General Counsel or guidance from the Board Secretary. Rather, the expert would serve in an independent governance advisory role and as a sounding board for Trustees.