

**REPORT OF INDEPENDENT INVESTIGATIVE
COUNSEL REGARDING THE MICHIGAN STATE
UNIVERSITY FOOTBALL PROGRAM'S RESPONSE
TO INCIDENTS OF ALLEGED SEXUAL VIOLENCE**

MICHIGAN STATE

U N I V E R S I T Y

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INTRODUCTION

Michigan State University (MSU) initially retained Jones Day to perform an independent investigation of the football program's institutional response to allegations of sexual assault in connection with a single incident that occurred in January 2017 involving three football players. In April 2017, during the pendency of our investigation, a fourth football player was involved in a separate incident of alleged sexual assault. MSU expanded our mandate to include the football program's response regarding this second incident.¹ Specifically, we examined whether the football program, and individuals associated with the program, complied with MSU's "Policy on Relationship Violence & Sexual Misconduct" (RVSM policy) in connection with these incidents.

In both instances, we found that senior leaders within the football program and the Department of Intercollegiate Athletics (Athletic Department) complied with the RVSM policy by promptly and accurately reporting the information they learned about the underlying incidents to departments within the University that are tasked with investigating and responding to such incidents. We also found no evidence that senior leaders within the football program or Athletic Department attempted to impede, cover up, or obstruct the Office of Institutional Equity's (OIE's) investigation into the underlying incidents.

With respect to the January 2017 incident, the senior leaders of the football program and Athletic Department reported the information they knew about the incident to OIE—the office within MSU responsible for the University's compliance with federal and state laws regarding

¹ In light of the ongoing criminal investigations and Title IX investigations, and to respect the privacy of those involved, details regarding the underlying incidents and the subsequent responses by University employees have not been included except where necessary for this public report.

sexual misconduct. Upon reporting to OIE, the reporters on the football staff and within the Athletic Department understood that OIE would contact the MSU Police Department (MSU PD) regarding the January 2017 incident. Those reporters then left the investigation to OIE and MSU PD, and made no attempts to investigate the incident themselves or interfere with the investigation by authorities. Indeed, upon first learning from one of his players (the “reporting player”) that an incident of sexual misconduct may have occurred, Coach Mark Dantonio followed MSU policy and his training on that policy by doing the following:

- informing the reporting player that Dantonio would have to report the incident to OIE and that OIE would contact the reporting player to obtain more information;
- immediately contacting OIE to convey the information reported to him by the reporting player;
- encouraging the reporting player to cooperate with OIE;
- contacting leaders within the Athletic Department to inform them of the information conveyed by the reporting player;
- refraining from investigating the incident any further so as not to interfere with any investigation by those trained to respond to these incidents, including OIE; and
- keeping the information as private as possible by not informing others on the football staff.

With respect to the April 2017 incident, Dantonio again took prompt and appropriate action upon learning from one of his players that another football player may have committed sexual assault. Dantonio immediately contacted MSU PD, OIE, and leaders within the Athletic Department to convey all of the information he had regarding the allegations. He also encouraged the reporting player to cooperate with any subsequent police investigation. Finally, Dantonio avoided investigating the matter or inserting himself into any investigation by OIE, and he did nothing to interfere with or obstruct the subsequent investigation.

While the University and football program were cooperative and provided us with full access to the information we needed to conduct our investigation, we were not able to interview certain individuals. Given MSU PD's and Ingham County Prosecuting Attorney's pending criminal investigations of the January 2017 incident, three players declined to be interviewed on advice of their respective counsel. Additionally, one member of the football staff declined to be interviewed. As a result, we are unable to fully assess what information was reported to or uncovered by that staff member regarding the January 2017 incident, as well as what actions that staff member took in response to such information. There is evidence, however, that the staff member violated MSU's RVSM policy, but we were unable to gauge the severity of any such violation.

I. ENGAGEMENT AND SCOPE OF WORK

On February 10, 2017, MSU engaged Jones Day to conduct an independent² and external review of the football program's compliance with MSU's RVSM policy in connection with an alleged sexual assault that occurred on University property in the early morning hours of January 16, 2017. As our investigation was underway, in April 2017, a second incident involving a football player allegedly occurred. MSU expanded our mandate to include a review of the football program's compliance with the RVSM policy in connection with that incident.

It was not within our mandate to investigate the underlying incidents giving rise to the allegations of sexual assault. Rather, we investigated what members of the football staff subsequently learned about the incidents, what actions they took upon learning such information,

² Prior to this investigation, the Jones Day attorneys who worked on this matter had not previously represented MSU, nor did they have any direct connection to the University.

and whether they complied with the RVSM policy. We have not analyzed whether any individuals associated with the University violated criminal law or Title IX. For the January 2017 incident, MSU PD and the Ingham County Prosecutor have conducted investigations of potential criminal violations, and the University retained Rebecca Veidlinger to conduct an independent Title IX investigation. For the April 2017 incident, the Meridian Township Police conducted a criminal investigation that led to a third-degree criminal sexual conduct charge against former MSU football player Auston Robertson.

During our investigation, we were provided access to all documents in the possession or control of the Office of General Counsel, Athletic Department, and football program that we requested. These records include MSU policies, training and educational material, call and text records for mobile phones, personnel files, calendars, expense reports, emails, and other relevant documents. In addition to the review of documents and data, we conducted 35 interviews, including interviews with coaches, players, and administrative staff in the football program, as well as University employees in the Athletic Department, OIE, and MSU PD. Multiple individuals were interviewed more than once. Upon request, interviewees provided additional documents, including text messages and phone records, to Jones Day. Through counsel, the three players under investigation for the January 2017 incident declined to be interviewed while the criminal investigation remains pending. One member of the football staff also declined to be interviewed.

Jones Day's factual findings, which have been presented in detail to the MSU Board of Trustees, are based on the information contained in the documents and data, interviews of witnesses, and reasonable inferences drawn from the evidence.

II. FACTS

A. MSU's Relationship Violence and Sexual Misconduct Policy

MSU's RVSM policy governs the conduct of University employees, including members of the football staff, for reporting information regarding sexual misconduct. The policy states, "All University employees ... are expected to promptly report sexual misconduct or relationship violence that they observe or learn about and that involved a member of the University community (faculty, staff, or student) or occurred at a University event or on University property." The policy states that instances of sexual misconduct should be reported to OIE and MSU PD. Training materials on this policy, including a "Mandatory Reporting Guide," specify that when a report of sexual assault is made to OIE, the OIE investigator will automatically refer the report to MSU PD.

In addition, the reporting and investigation protocols laid out in the Mandatory Reporting Guide specify that a University employee who learns information about a potential sexual assault should not attempt to investigate the matter. It states, "Don't try to investigate; Don't try to determine if a crime or violation of policy occurred; [and] Don't try to determine if a sexual encounter was/wasn't consensual." The RVSM Policy emphasizes that investigations should not be undertaken by employees of the University, but should be conducted by OIE: "Trained professionals conduct investigations under the oversight of the Deputy Title IX Coordinator for Investigations."

B. The Football Program's Attention to the RVSM Policy and OIE

The football program is proactive in training its coaches, staff, and players regarding the RVSM policy and OIE's mission on campus. In the past two years, the football program has participated in at least five training sessions with OIE. These programs have included seminars

for the staff on the RVSM policy's reporting requirements, as well as training for players to help them understand the policy.

In addition to the training conducted by OIE, the football program designs and frequently conducts its own training programs for players, including programs focused on academics, leadership, substance abuse, campus behavior, and sex. For freshman players, the football program conducts weekly programs called "Keeping it Real" that touch on these topics. In fact, on January 9, 2017, one week before the January 2017 incident that led to this investigation, Dantonio asked the Director of OIE, Ande Durojaiye, to make a presentation to the entire team regarding sexual misconduct and relationship violence. Members of the football program were aware of and regularly trained on the RVSM policy.

C. Response to and Reporting of the January 2017 Incident

1. Head Coach Mark Dantonio

On January 16, 2017, the reporting player had a meeting with Head Coach Mark Dantonio—a regularly-scheduled weekly meeting with the reporting player to monitor his academic, athletic, and social progress. During the meeting, which took place shortly before 2:00 p.m., the reporting player became emotional and began to make a statement regarding a woman whom he had helped, saying, "I had to get her out of there. She is my friend." The reporting player did not provide details of what occurred, when it occurred, where it occurred, or who was involved. He also did not inform Dantonio that the situation involved sexual misconduct or assault. Nonetheless, Dantonio suspected the reporting player was a potential witness to an incident that could implicate the University's RVSM policy. Dantonio stopped the player so Dantonio could immediately contact OIE.

Within minutes of speaking with the reporting player, Dantonio contacted the Director of OIE, Ande Durojaiye, to report what the player had said. Durojaiye informed Dantonio that OIE would contact the reporting player to conduct an interview. Dantonio asked if a member of the football staff could accompany the reporting player to the OIE interview, which Durojaiye confirmed was appropriate. After speaking with OIE, Dantonio contacted the reporting player to inform him that OIE would follow up with an interview and that the reporting player could be accompanied by a football staff member. Since Dantonio planned to depart East Lansing the next day for a recruiting trip, Dantonio told the reporting player to contact Dino Folino (Director of Personnel and Player Development) if he would like someone to accompany him during the interview.³ Dantonio, however, did not inform Folino that he might be contacted by the reporting player.

Dantonio next contacted Director of Intercollegiate Athletics Mark Hollis and Senior Associate Athletic Director Alan Haller to inform them of his meeting with the player and his report to OIE. With no delay, Haller met with Dantonio in person to ensure that, in accordance with University policy, Dantonio did not investigate further by questioning players. At Hollis's request, Haller also contacted OIE to separately confirm that Dantonio had made a report. OIE confirmed Dantonio made a report and conveyed that it would contact MSU PD to determine if it had any additional information, which was subsequently communicated to Hollis and Dantonio. Within approximately one hour after Dantonio first spoke with the reporting player, Haller,

³ Folino was responsible for daily monitoring of the reporting player to make sure the player was attending class, tutoring sessions, and workouts.

Hollis, and Dantonio were all under the impression that OIE would contact MSU PD regarding the January 2017 incident.

Phone records confirm that the following communications occurred immediately after Dantonio spoke with the reporting player:

- At 2:01 p.m., Dantonio contacted Brad Lunsford (Director of Executive Football Operations) to request contact information for Durojaiye
- At 2:03 p.m., Lunsford responded via text with Durojaiye's office telephone number.
- At 2:05 p.m., Dantonio contacted Durojaiye's office, but Durojaiye was not in the office. OIE contacted Durojaiye to inform him that Dantonio called.
- At 2:12 p.m., Durojaiye contacted Dantonio, and Dantonio reported what the reporting player had told him.
- At 2:18 p.m. and 2:20 p.m., Dantonio contacted the reporting player to inform him that OIE would interview him and that he could be accompanied by a staff member of the football program during the interview.
- Beginning at 2:18 p.m. and continuing through 3:32 p.m., Durojaiye had multiple calls with Haller, and Hollis had calls with both Haller and Dantonio.

After these series of calls, Dantonio did not have additional discussions about the matter with the reporting player and did not investigate further by asking questions of his players or discussing the incident with his staff. Dantonio did not learn the names of the players allegedly involved in the January 2017 incident until after MSU PD had identified the players. In consultation with the Athletic Department, Dantonio then suspended the players identified by MSU PD.

2. Dino Folino

On January 19, 2017, MSU PD contacted the reporting player to request an interview with him. Three days prior, Dantonio had told the reporting player that Folino could accompany the player during his interview with OIE. Folino, however, was not told anything about this.

This is corroborated by interviews with Dantonio, Folino, and the reporting player, as well as phone records. Instead, on January 19, Folino received a call from the reporting player. The reporting player was confused, told Folino that someone was coming to interview him, and told Folino that Dantonio said to call him. Folino, unaware of the purpose of the interview or who exactly would be conducting the interview, traveled to the reporting player's dorm. Arriving moments before MSU PD, Folino had no meaningful opportunity to discuss the matter with the reporting player. MSU PD requested that Folino leave the dorm, which he did. After this, Folino did not discuss the matter further with either the reporting player or Dantonio. There is also no evidence that Folino attempted to investigate the matter further, or took any actions to impede, obstruct, or interfere with OIE's investigation.

3. Suspended Staff Member

As stated above, one member of the football staff declined to participate in Jones Day's investigation. Nonetheless, there is evidence that, on January 16, 2017, this staff member learned about an incident potentially involving football players from the reporting player who initially reported to Dantonio. The reporting player informed the staff member that he had already spoken with Dantonio and that Dantonio was reporting the information to OIE. This staff member subsequently spoke with the three players allegedly involved in the January 2017 incident in order to determine what had occurred, communicated with a parent of one of those players regarding the incident, and failed to report any information he learned to OIE or MSU PD. We have obtained no evidence that this staff member spoke about the incident or conveyed the information he learned to anyone else at the University, including anyone on the football staff. This staff member was subsequently suspended.

4. Other Staff Members

Beyond the suspended staff member, the majority of the football staff was unaware that alleged sexual misconduct involving football players had occurred or that MSU PD was conducting an investigation of the January 2017 incident. Jones Day identified and interviewed numerous players who may have had information regarding the underlying incident to determine if they made any reports to members of the football staff or others within the University who have regular contact with the football team, including staff within the Athletic Department and the Clara Bell Smith Athlete Academic Center. Jones Day also interviewed numerous coaches, and reviewed telephone and text records of those coaches, to determine if they learned about the January 2017 incident at any time prior to those players being suspended from the team. Those few staff members who became aware of a potential incident after Dantonio's report to OIE did not learn any details regarding the incident; they only heard that an investigation was underway after the incident had been reported to OIE and after MSU PD had identified the players who might be implicated in the incident. Having no details, and understanding that MSU PD was already investigating the incident, these staff members did not make a duplicative report to OIE or MSU PD. There is no evidence that these members of the football staff intentionally impeded, obstructed, or interfered in OIE's investigation into the alleged sexual assault.

D. Response and Reporting of the April 2017 Incident

On Sunday April 9, 2017, a different football player contacted Dantonio via telephone to inform him that a female he knew was raped by another player on the football team. Dantonio did not elicit details about the incident, but instead told the player that Dantonio would immediately report the information to MSU PD and OIE. He told the player to expect a call from MSU PD and instructed the player to cooperate in any subsequent investigation. Upon

hanging up with the player, Dantonio called Chief Jim Dunlap of MSU PD to report the information he learned from the player. Dantonio also texted Dunlap the contact information for the player who made the report. Dantonio next called Hollis and Haller in the Athletic Department and Durojaiye at OIE to report what Dantonio had learned. Dantonio conducted no further investigation of the matter.

III. FINDINGS

A. Head Coach Mark Dantonio

Our investigation uncovered no evidence that Dantonio violated the RVSM policy. With respect to the January 2017 incident, Dantonio took prompt and decisive action when one of his players began to provide information that led Dantonio to suspect the player may have been a witness to a sexual assault. Specifically, Dantonio stopped the player before he could provide details, informed the player that he would have to report the information to OIE, immediately contacted OIE to make a report, helped coordinate an interview of the player with OIE, and encouraged the player to cooperate with OIE. After ensuring he reported to OIE, Dantonio promptly informed senior leadership in the Athletic Department—Mark Hollis and Alan Haller. In those discussions, he learned that OIE would contact MSU PD regarding the matter.

As the RVSM policy requires, Dantonio immediately took steps to ensure the limited information he had was reported to those trained to respond to incidents of sexual misconduct—OIE and MSU PD. Dantonio was then careful to limit dissemination of the information within the football program, and in accordance with policy, refrained from investigating the incident any further. After his initial discussion with the reporting player and until he learned that the implicated players had been identified by MSU PD, Dantonio did not learn any additional details regarding the January 2017 incident, including who was involved, when or where it occurred, or

what may have happened. Our investigation found no evidence that Dantonio did anything to impede, obstruct, or interfere with OIE's investigation of the incident.

Similarly, Dantonio promptly and fully reported the information he learned from a player related to the April 2017 incident. Our investigation found no evidence that Dantonio took any actions to impede or interfere with the subsequent investigation of that incident. To the contrary, Dantonio immediately conveyed the information regarding an alleged assault to MSU PD so it could open an investigation, and he encouraged the player who reported the assault to cooperate with authorities.

Dantonio's prompt reports to University authorities (OIE and/or MSU PD), coupled with the extensive training the football program does on the RVSM policy, demonstrated his commitment to comply with the University's policies regarding sexual misconduct.

B. Other Football Staff

With the exception of the one member of the football staff who declined to participate in our investigation of the January 2017 incident, our investigation found no evidence that members of the football staff violated the RVSM policy. Specifically, we found no evidence that staff members learned of information that would trigger the mandatory reporting obligations under the RVSM policy. We also found no evidence they conducted any investigation into either the January 2017 or April 2017 incident, or intentionally interfered with, obstructed, or impeded OIE's investigation.

With respect to the staff member who declined to participate in the investigation, the evidence available strongly suggests that he did violate MSU's RVSM Policy and its related protocols. The staff member learned information about the January 2017 incident from the same player who made a report to Dantonio. Unlike Dantonio, however, this staff member spoke with

the three players who were involved to determine what happened and spoke with a family member of one of the players regarding the incident. These actions are contrary to the reporting and investigation protocols associated with the RVSM Policy, which instruct employees to not investigate the matter, not try to determine whether the encounter was consensual, and not try to determine whether a crime or violation of policy occurred. The investigation is to be conducted by trained professionals—OIE and law enforcement. In this case, the evidence available to us shows that, in contravention of these rules, the staff member conducted his own inquiry into the incident.

The RVSM Policy further states that an “employee must report all relevant details about the alleged relationship violence or sexual misconduct that occurred on campus or at a campus-related event, including the name of the victim, the accused, any witnesses, and any other relevant facts, including the date, time, and specific location.” There is no evidence that the staff member reported the information he learned through his investigation to OIE or MSU PD. Nonetheless, without interviewing the implicated players or the staff member, Jones Day is unable to fully assess precisely what information was reported to or uncovered by that staff member, and what actions that staff member took in response to such information, his motives for conducting his own investigation, and the severity of his violations of the University’s RVSM Policy and related protocols.

IV. CONCLUSION

Based on the information currently available, Jones Day has concluded its investigation. Jones Day has presented in detail its factual findings to MSU’s Board of Trustees.