

# U.S. Department of Education cites Michigan State University with Clery Act violations

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The U.S. Department of Education has found that Michigan State University officials for years violated federal law by failing to comply with requirements that aim to ensure a safe campus. *Education Images/UIG via Getty Images*

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The U.S. Department of Education has found that Michigan State University officials for years violated federal law by failing to comply with requirements that aim to ensure a safe campus, systemically underreported crime statistics, and -- in the handling of sexual assault allegations against former athletics physician Larry Nassar -- demonstrated "a lack of institutional control."

The violations listed in the 46-page report, a copy of which was obtained by Outside the Lines, span the campus and include athletics, Greek life and residence halls, among other areas. The report found that university officials routinely failed to report crimes and disclose accurate crime statistics; failed to warn students of possible criminal threats; and failed to identify and train people who are responsible for reporting crimes. In addition, investigators found that the university had a "lack of administrative capability," an impairment that the report noted was "one of the most serious findings that can result from a campus safety program review."

In sum, federal officials told Michigan State administrators in the Dec. 14 report that the findings "constitute serious violations of the Clery Act." Signed into law in 1990, the Clery Act requires colleges and universities that participate in federal student aid programs to report crime statistics and security concerns so the public can assess campus safety, including reports of sexual violence. The act does not directly mandate how schools should investigate crimes, provide services to victims or administer discipline, but focuses on how an institution handles reports of crimes and alerts students to possible dangers. Its goal is to ensure that a campus has policies and procedures to keep all students safe.

"As noted throughout this report, the findings documented by the department constitute serious violations of the Clery Act that, by their nature, cannot be cured. There is no way to truly 'correct' violations of these important campus safety and crime prevention laws once they occur," the report said.

U.S. Department of Education officials did not immediately respond to a request for comment.

Michigan State issued a statement Wednesday that reads in part: "The university is committed to cooperating with the department and is carefully reviewing the preliminary findings. Our staff will continue to focus on making improvements to ensure accurate and transparent reporting on campus crime policy and statistics. It is our goal to be in full compliance with Clery Act requirements, which is one of the many ways we are working to strengthen campus safety."

Michigan State officials have until Feb. 12 to respond to federal officials about the Clery report, after which the federal investigators will review any additional materials and issue a final determination. The school, which remains under "active investigation" by federal officials, could face financial penalties in addition to possible restrictions involving the ability to receive federal financial aid. As a result of the findings in the report, the university's application for recertification to receive federal financial aid is on hold; the university is currently participating in the program on a month-to-month basis.

Clery Act fines have risen in recent years and can reach up to \$56,000 per violation, depending on when each violation occurred. In September, the Department of Education fined the University of Montana nearly \$1 million for crime-reporting failures, the second-largest fine ever. The largest was the nearly \$2.4 million fine levied against Penn State University in November 2016 in the wake of the Jerry Sandusky child abuse scandal.

Outside the Lines obtained a copy of the federal report Tuesday afternoon, when the university responded to a Jan. 7 public records request.

Federal officials began their review of Michigan State in January 2018 after multiple media reports noted the scope of Nassar abuses on the East Lansing campus. Investigators examined Nassar-related reports dating to 1997 and, separately, reviewed police records, disciplinary reports and data from 2011 to 2018 involving other reports of crime on campus.

The federal report says that MSU's failure to detect and stop Nassar's "two-decade long predatory and abusive behavior indicates a lack of institutional control, especially in light of the credible information reported to institutional officials at several points over many years." The former MSU and USA Gymnastics team doctor is serving essentially a life sentence in prison after facing multiple convictions for having sexually abused and assaulted young gymnasts and other female athletes.

The report also states that an associate athletic director -- who is not named -- was among the MSU employees who failed to properly report information received in 2016 from a former MSU athlete that Nassar had touched her inappropriately. Previous reports of Nassar's behavior have implicated other athletic department staffers, including coaches, but

this would be the most senior member of the athletic department to be named in such a report and is among a few descriptions of Nassar abuse in the report that have not previously been reported.

The report says that the crimes reported to MSU officials by the Nassar survivors "unquestionably posed a serious, ongoing threat to campus community members and, most specifically, to female patients of MSU Sports Medicine." The report cited MSU for not issuing what's known as "timely warning" -- a notice universities are required to provide to students if a possible ongoing threat exists.

Much of the report focused on MSU's "institution-wide" problem with identifying, notifying and training the campus-security authorities who are supposed to report any possible crimes to designated university officials. Problems with identifying and training people responsible for reporting crimes was noted as a factor for both the Greek system and athletics. The campus-security authorities, also known as CSAs, include 19 head coaches.

According to federal investigators, reports of sex crimes that came into MSU's Sexual Assault Program, which provides advocacy, counseling and support to students who report being sexually assaulted or abused, were not being counted due to a wrongly held belief that those employees were not required to report such crimes to authorities. When federal investigators tried to get documentation about such reports, "no such documents were ever produced as the university stated that the SAP Office did not maintain such records."

The Sexual Assault Program has come under public scrutiny before. In connection with reports of sexual assault against MSU athletes, one former counselor told Outside the Lines last year that there was a lack of transparency and routine procedure involving such cases. In a separate case, a former Sexual Assault Program director and supervisor stated in a current MSU student's Title IX lawsuit against the university that the supervisor knew of a "multitude of female students that had been sexually assaulted by MSU athletes who had been discouraged from reporting their assaults to the [Office of Institutional Equity]-Title IX office, and law enforcement."

Federal investigators also found that while reports from the university's Office of Student Conduct against individual students seem to have been tracked reasonably well, "no such assurances exist for disciplinary actions taken against groups or teams because of the university's larger, systemic failure to identify and request crime statistics from CSAs."

The Nassar case provides multiple examples, according to the federal authorities.

Investigators listed 11 examples in which abuse survivors complained about Nassar to a campus-security authority who then failed to properly report the claims. Some of those examples have been publicized previously, but the federal report lists incidents from 2015, 2016 and between 2008 and 2010 that have not been previously made public. In those

cases, according to the investigators' report, improper action was taken by an associate director of athletics, a strength and conditioning coach, an athletic trainer and a fourth university employee whose job title was not listed.

In a 2016 report from a former female athlete who said Nassar had touched her inappropriately, Clery investigators found that she relayed the assault allegations to an MSU strength and conditioning coach -- who was not named in the federal report -- who "admitted that he knew how to report such an incident but ignored his training." Instead, the report says, the coach told an associate director of athletics. Neither reported the incident to campus police or the school's office that investigates Title IX sexual violence complaints, the report says.

The four unidentified employees join a list of others at Michigan State who failed to properly report or respond to accusations against Nassar. The list includes former gymnastics coach Kathie Klages, who has been criminally charged in connection with lying about her knowledge of Nassar's crimes; former medical school dean William Strampel, who has also been charged with misconduct of a public official, fourth-degree criminal sexual conduct and two counts of neglect of duty for the way he handled complaints against Nassar; former university physician Brooke Lemmen; and multiple other coaches and athletic trainers, some of whom still work at MSU.

- At the height of the Larry Nassar scandal at Michigan State, demonstrators gathered at "The Rock" on campus to support Nassar survivors and call for more changes in leadership at the university. *Dale G. Young/Detroit News via AP*

The latest report from the education department marks the second time federal investigators have found MSU to have improperly handled the reporting of alleged offenses against students. In September 2015, the U.S. Department of Education Office for Civil Rights issued findings in relation to two Title IX complaints against MSU, noting that the school's "failure to address complaints of sexual harassment, including sexual violence, in a prompt and equitable manner" caused and may have led to a "sexually hostile environment" on campus.

That 2015 report noted problems similar to those found in the December Clery compliance report: poor record keeping and reporting, issues with obtaining information from law enforcement, and a lack of knowledge among people who were responsible for reporting incidents of sexual violence to the Title IX office, specifically mentioning the "men's head basketball coach" as being one of a few people who were unaware of the proper procedure.

Starting in 2015, the university was put on a three-year federal monitoring program. In February 2018, the Department of Education's Office for Civil Rights launched a separate Title IX gender equity law compliance investigation specifically into MSU's handling of Nassar, and that investigation is ongoing.

MSU's failure to warn students of potential harms extended beyond Nassar. The Clery report lists 21 burglaries or robberies from 2011 to 2016 in which suspects were still at large or there appeared to be a pattern of similar crimes or victims, yet university police did not properly notify students.

Federal investigators also noted that the current MSU employee responsible for overall Clery compliance was unaware of how many campus-security authorities the university actually had. That employee, who was not named, also stated that the university "has not coordinated or trained [the CSAs] for the role that they are to play in the maintenance of Clery compliance," and that the employee was unable to determine which CSAs had actually reviewed the training materials.

Investigators also noted that sometimes MSU employees were not aware of the geography covered by the Clery Act, which includes locations on or adjacent to the campus and property owned or controlled by the school or student organizations, including fraternities and sororities. The report noted at least eight crimes over about two years that had occurred just outside of Greek housing that were not included in the school's crime reports.

"Although the effect of Michigan State's systemic failure to collect crime reports from CSAs cannot be reliably quantified, it is abundantly clear that it caused Michigan State's crime statistics to be substantially and systemically underreported," the report says.

Federal investigators noted several problems in getting records, such as complaints against employees made to the school's human resources department. The report said that MSU "has no system through which employee disciplinary cases are tracked or from which such cases can be retrieved."

Even MSU's own employees had trouble obtaining university records: In a footnote, the report says the fact that the current Clery coordinator and other university officials, "including Title IX investigators, are routinely required to either subpoena the production of MSUPD incident reports or seek them under the state open records law is disturbing."

In its ongoing effort to find out who knew what about Nassar and when, the Michigan attorney general's office also has struggled to get information from the university. Michigan State continues to "stonewall" investigators attempting to review the university's response to Nassar, said William Forsyth, the special counsel who initiated an ongoing investigation for the state attorney general's office. Forsyth said in December that Michigan State's leaders were issuing misleading public statements, waging legal battles to withhold pertinent documents and attempting to overwhelm his team with thousands of irrelevant documents in an effort to impede their progress. That investigation has thus far led to criminal charges against three former employees, including former university president Lou Anna Simon. Forsyth deemed the problems at Michigan State "a failure of people, not policy."

In its statement, MSU said it has already made several changes in terms of Clery Act compliance, including enhancing training, sharing best practices among other Big 10 Clery Act coordinators, and expanding and strengthening several Clery and Title IX committees.

"The safety and well-being of our campus community is our top priority," said MSU Acting President Satish Udpa. "The Nassar crimes caused so much pain to so many people, and we have more work to do to address those issues and support the survivors and our community. We welcome the opportunity to work with experts to review and strengthen areas as we renew our commitment to improve."

A congressional investigation into MSU's actions pertaining to Nassar remains ongoing, and a review by the state House of Representatives resulted in an April 2018 report that criticized MSU's actions and suggested reforms.

In August 2018, the NCAA issued a report noting that it found no NCAA rules violations pertaining to MSU's actions regarding Nassar nor with the university's response to sexual assault and violence reports made against football and basketball players.