

**INDEPENDENT INVESTIGATION REPORT
REGARDING THE UNIVERSITY OF IDAHO'S RESPONSE
TO ALLEGATIONS OF SEXUAL MISCONDUCT**

Submitted on July 16, 2018

This report is submitted by Dan Beebe and Pat Olsson, who have been engaged by the University of Idaho to review the matters set forth below. We have organized the report in the following sections: Issues, Work Scope, Overview, Analysis of Title IX, Findings Regarding Issue No. 1, Findings Regarding Issue No. 2 and Improvements.

ISSUES

1. Did the University properly address and respond to allegations of misconduct by former football student-athlete Jahrie Level during the 2012-13 academic year?
2. Was there improper influence exerted in Spring 2018 over student-athletes in the Volleyball and/or Women's Soccer programs to require support of the Athletics Director?

WORK SCOPE

We conducted this review as independent consultants. Neither of us is an alumnus and we have not been employees of the University of Idaho. We are not related to nor have we worked closely with those who were involved with the issues at question. We are not serving in a legal capacity and this is not submitted as a legal opinion. Further, we together are not advising relative to personnel decisions. Our purpose is to submit this report of the information we have gathered and provide input based upon our experiences about actions that were effective or ineffective regarding the events in question, as well as the improvements that have been implemented from 2012-13 to present.

We reviewed thousands of pages of documents both created contemporaneously with the issues at hand and produced well afterwards. We conducted interviews of current and former employees, including coaches, and student-athletes. We agreed with each interviewee to keep our conversations private but indicated that they could not be confidential to the degree that information we obtained would need to be shared in our report.

We are under the assumption that several of the events, items and people identified in this report are known and, therefore, we are not providing details or a chronology of all events. For example, we are not providing a history or details about Title IX (the law prohibiting discrimination in educational benefits based on sex), and the commonly-known guidelines provided by the Office of Civil Rights (OCR), although we cite elements below when applicable

to issues in this case. Nor are we giving details about the backgrounds of people we interviewed or a step-by-step account of widely-publicized events, unless doing so explains what we have found or input we are providing. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

To protect many of our interviewees, we have not specifically identified them. As noted below, some who were involved would not agree to be interviewed and one is dead. Regardless, contemporary documents and the testimony of many others make it unlikely those whom we can't interview would provide unknown or significantly different information. [REDACTED]

[REDACTED]

[REDACTED]

Although we took care to understand every document reviewed and each person we interviewed, nonetheless, on May 29, 2018, we gave a verbal report of our findings to President Chuck Staben and Deputy General Counsel James Craig to provide them the opportunity to indicate if there are documents we may not have reviewed or people we didn't interview who would clarify representations we made. We also sought direction on whether to expand our review. We consider this a best practice, although it would not result in an adjustment to our report based on a difference of opinion about findings we make. We each have established long careers based on integrity and will not deviate from our commitment to conduct our work only with the highest degree of honor. Our verbal report resulted in affirmation by the President and Deputy General Counsel that we had addressed the appropriate issues. They did not suggest additional people to interview or documents to review, nor did they request expansion of our review to include additional issues.

President Staben and General Counsel Kent Nelson recused themselves from the investigation based on previous involvement with Dr. Spear and the substance of the issues to be considered. We have worked with Deputy General Counsel James Craig to request assistance with documents to be found and supplied for our review, as well as witnesses for us to interview. This was an independent investigation and no one at the University has been involved with our review and analysis other than those interviewed. Nor has anyone, aside from ourselves and the interviewee, participated in the interviews we have conducted.

OVERVIEW

A Tumblr post on January 30, 2018, written by former Idaho student-athlete Mairin Jameson who graduated May 2014, expressed her strong disappointment regarding how the Athletics Department responded to her [REDACTED]. Ms. Jameson primarily blamed Athletics Director Rob Spear for

inadequately supporting her. Subsequent publicity by the Idaho Statesman of this post [REDACTED] [REDACTED] appeared to be the impetus for a vote by the ASUI (Associated Students of the University of Idaho) to recommend dismissal of Dr. Spear. Dr. Spear was placed on administrative leave and President Chuck Staben hired us to investigate the issues set forth above and provide a report.

In her interview with us, Ms. Jameson indicated that she wrote the blog three years ago, but did not publicize it until January 2018. She said the #MeToo movement gave her the courage to speak out finally. Ms. Jameson's issues concerned [REDACTED] [REDACTED], but even more, she felt that the Athletics Department had not taken her concerns as seriously as they should; she felt that "she was not being heard." In her mind, Dr. Spear had not shown compassion for what she had undergone, [REDACTED], but in the courage it took to make the report.

We feel it is important to note that we were presented with evidence of Ms. Jameson sending a request on January 24, 2015, for Dr. Spear to accept her invitation to LinkedIn. This invitation would have been contemporaneous to the time she said she wrote the contents of what she ended up posting on Tumblr. When asked for an explanation for the invitation to Dr. Spear in light of her feelings about him not addressing properly [REDACTED], Ms. Jameson's attorney informed us that Ms. Jameson did not recall the invitation and that, if she did send it, she didn't do it on purpose or intentionally. Although it does appear that a LinkedIn connect invite can be sent inadvertently, we thought it important to report this information.

Ms. Jameson felt that others in the Athletics Department to whom she initially reported (her coach and the Academic Coordinator) were compassionate. Ms. Jameson reported that once she was referred to the Dean of Students Office, the University-wide offices supported her and processed her claim.

APPLICATION OF TITLE IX TO THIS CASE

The landscape of addressing sexual misconduct has been changing rapidly in all sectors of society, and especially in educational institutions. Policies, procedures and practices at Idaho, and around the country in higher education, have been greatly enhanced the past five years. Much of the change is due to the fact that in April 2011, the Office of Civil Rights (OCR) submitted a "Dear Colleague" Letter (DCL) to all institutions of higher education that are recipients of Federal funds. The DCL reminded educational institutions of the previously issued Department of Education Office of Civil Rights (OCR) January 2001 Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties. As with many changes in higher education, it took time for institutions across the country, including Idaho, to absorb the DCL and implement its guidance.

The DCL (in approximately 20 pages) spelled out, in great detail, the Office of Civil Rights' (OCR) interpretation of Title IX's requirements for training, reporting, investigating, communicating,

and overall processing violations of Title IX. In spite of the 2001 Guidance, it appears universities primarily applied Title IX to ensuring gender equity—the fair treatment of both men and women students. Nonetheless, until well after the DCL, most schools, including post-secondary institutions, had not initiated training. As we have seen in media reports and lawsuits, even in 2013, many campuses of some of the most prominent universities in the country had not grappled with the detailed guidance of the DCL. In fact, the Idaho State Board of Education did not issue a statewide policy addressing the DCL specifics until June 2016, well after the University of Idaho had trained all of its mandatory reporters.

In spite of the delayed response by Idaho and other institutions across the country to apply the guidance of the DCL, we must recite elements of the DCL that are applicable to this case. This is not to offer an opinion on how quickly Idaho or even most universities across the country should have absorbed and implemented the DCL guidance. Since the issues in this case, and similar ones around the country, are being reviewed in the context of the DCL, and since Idaho and most, if not all, universities are now applying the guidance of the DCL, we feel it necessary to analyze these issues based upon the DCL.

The DCL made clear the following: When sexual harassment is involved, off-campus behavior must be addressed by the educational institution as the misconduct likely would prevent the alleged victim from enjoying the benefits of education. In addition, the DCL states that sexual misconduct included “...sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol.” In defining who has the obligation to report student-on-student sexual violence (which is a defined term in the DCL), the DCL requires that anyone with reason to know or who should have known should report to the Title IX coordinator.

The DCL indicates that schools are responsible to train its employees and students and states in part: “OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.” It also states, “...schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly.”

Finally, relative to this case, the DCL states that a school’s Title IX investigation is different than a law enforcement investigation, which does not relieve the school of its independent Title IX obligation to investigate the conduct, unless circumstances require it delay its investigation in order to prevent impediments to the law enforcement investigation.

Although the current U. S. Department of Education has rescinded the DCL, there has not been new guidance provided, except that schools have been informed that they are allowed to use a higher standard than preponderance of the evidence (i.e., is it more likely than not), and can now use the “clear and convincing” standard, which is harder to meet, in determining whether

an accused student has violated Title IX. As with all higher education institutions of which we are aware, Idaho has chosen to continue using the preponderance of evidence standard. Title IX is still the law of the land, which means schools must still promptly and equitably investigate sexual harassment and assault. In addition, schools must provide survivors the accommodations and support services, including counseling, they need in order to remain in school and learn.

FINDINGS REGARDING ISSUE NO. 1: Did the University properly address and respond to allegations of misconduct [REDACTED] [REDACTED]?

The facts concerning allegations by Ms. Jameson regarding the sexual misconduct against her [REDACTED] are widely publicized. [REDACTED]

[REDACTED] We have determined that there are a number of ways the University failed to provide Mairin Jameson the proper support and advice, as well as protection from the traumatic sexual battery committed by Mr. Level.

Policy changes and notice: A concern relative to this case involves the University's notice and guidance (through education and training) to its employees, including those in the Athletics Department, of the policies and reporting obligations of the University and of Title IX. Besides Dr. Spear, Ms. Jameson informed the Athletics Academic Coordinator, her head coach, the head football coach and the Moscow Police Department (MPD) lieutenant under contract with the University to work with students, and particularly, Athletics.. (The Academic Coordinator no longer works with the University and the MPD lieutenant is retired.) None understood that off campus sexual misconduct was subject to the University student conduct code, even though the code had been previously amended to include jurisdiction over off campus sexual harassment. Based on this misunderstanding, the Athletics Department failed to properly report the allegations to the Dean of Students office and the Title IX Coordinator, delaying appropriate response and support for Ms. Jameson. In this regard, we found the following:

- The DCL providing guidance to educational institutions was sent on April 4, 2011. As noted, it indicated that schools are required to train all employees to know how to report harassment and how to respond, including that all reports of sexual misconduct, on or off campus, should be forwarded to the Title IX Coordinator. Our investigation revealed such education did not take place prior to the incidents reported by Ms. Jameson. The DCL also required that a grievance policy be widely disseminated to students and employees, which did not happen.
- On February 27, 2012, the University President at the time, Duane Nellis, issued an Emergency Policy (EP) to amend the student conduct code in Faculty Staff Handbook (FSH) 2350 to include for the first time that sexual harassment (including sexual violence) committed off the campus was under the jurisdiction of the University. The EP stated that it was issued to comply with the Department of Education requirements, which we were informed meant the DCL. Emergency Policies stayed in effect for 180 days, until they could be considered and ratified by the Faculty Senate. In spite of this

significant change in policy, we found no evidence of notice of this Emergency Policy provided to the University community, which seems to defeat the fact that it was designated as an emergency. Subsequently, there was a routine notice to faculty, staff and students on the third page of the April 2, 2012, Today's Register of University policy changes through March 27, 2012, which would have included the Emergency Policy, had anyone followed the link. (Due to a system wide naming convention change, the link has been expanded www.webpages.uidaho.edu/uipolicy/register_publication_of_changes.htm but was available then, and is still available in the current naming structure cited above on the web.)

- The Emergency Policy change to FSH 2350, with minor revisions, was adopted at the University Faculty Meeting on April 24, 2012, was then approved by President Nellis on May 30, and was posted live online on June 4, 2012. Buried towards the bottom on the third page of the April 2, 2012, Today's Register appears a mention of University wide policy changes, which included the Emergency Policy but did not highlight its significance. Subsequently, University employees only were notified by a general email (Attached as Appendix B) sent on June 19, 2012, with a link to all the policies that were amended. Both the notice to the University community about the Emergency Policy and subsequently amended FSH 2350 were treated in routine fashion with a link to the location where it was located on the intranet. In our view, such an important change to policy should have been significantly highlighted, and perhaps quoted verbatim, in the cover written communication to staff and faculty, in addition to the link.
- As reported below, none of the Athletics Department personnel who were informed of Ms. Jameson's allegations, all of whom ostensibly received the email attached as Appendix B, were aware of the policy change. In fact, a faculty member and the current Title IX Coordinator confirmed that faculty, who have significant interaction with students, were generally unaware of the change through 2013 and beyond, and many still operated under the view that off campus conduct was not under the jurisdiction of the school.
- An opportunity was missed at the times of the issuance of the Emergency Policy, and subsequent ratification, to also amend the University policies regarding reporting of sexual misconduct in order to comply with the DCL. FSH 2350 could have stated clearly and early in the document that all allegations of sexual misconduct must be reported to the Title IX Coordinator, in compliance with the DCL. Instead, FSH 2350 refers the reader to an Administrative Procedure Policy (APL) 95.20 did not cl, which also did not outline the reporting structure. These policies should be amended to clearly state the obligations and the reporting duties.

- Dr. Spear’s current contract and the one he had during the 2012-13 academic year both have the same provision requiring him to know, recognize and comply with all applicable policies, rules and regulations of the University. The contract also requires Dr. Spear to ensure all employees in the athletics program know, recognize and comply with such policies. Although a strict interpretation of this provision would mean that he should have known at the time of Ms. Jameson’s complaint about the new policy relating to off campus sexual misconduct, a shared responsibility of the employer is that adequate notice is provided to employees of significant policy changes. We find that did not happen in this case.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Response by the Athletics Department: Concerning the treatment of Ms. Jameson by the Athletics Department, we found the following, most of which are reported in the attached Appendix A as well:

- Ms. Jameson first reported [REDACTED] to the Athletics Academic Coordinator on April 23, 2013, a few days after the April 20 battery occurred. The Academic Coordinator told Ms. Jameson they should talk to MPD Officer Dave Lehmitz. (The MPD had a contract to provide law enforcement assistance to the University.) It appears the Academic Coordinator (who no longer works for the University and would not respond to our requests for an interview) believed that since the battery occurred off campus, it was subject to the MPD process and not within the jurisdiction of the school. Based upon the DCL guidance, she should have been trained to immediately report to the Title IX Coordinator, which she did not do.
- Ms. Jameson then called her coach, Head Swimming and Diving Coach Mark Sowa, on April 25, who was on a recruiting trip in Denver, to report [REDACTED]. The head coach is a mandatory reporter and should have reported to the Title IX Coordinator, but he also was not trained and, indeed, did not do so.
- As noted in Appendix A, when Ms. Jameson met on April 25, 2013, with Dr. Spear, Head Football Coach Paul Petrino, Officer Lehmitz, and her coach, Officer Lehmitz erroneously

told everyone that the University could take no action because the incident occurred off-campus. None of the Athletics Staff or Officer Lehmitz was aware of the change to the Student Code (Section 2350, as noted above) that subjected off campus sexual misconduct to the University policies. (As analyzed above, we believe notice about the change was inadequate.) All believed, therefore, that only the MPD and the Athletics Department could address [REDACTED]. In addition, the DCL required that each individual in the meeting should have advised or escorted Ms. Jameson to the Dean of Students Office to immediately report to the Title IX Coordinator. None had training to do so and none did.

- Dr. Spear stated that he notified then President Duane Nellis of the allegations at a campus function on April 26, 2013, but the President did not remind Dr. Spear of the Emergency Policy and the requirement that the University investigate. The President acknowledged to Ms. Ellers that he had a brief conversation with Dr. Spear, but did not recall the details (as noted in Appendix A). We grant that a passing conversation just to put the President on alert would not necessarily trigger notice of the changed policies, but felt it should be reported nonetheless as it presented another opportunity, albeit unlikely, for notice of the policy change and appropriate response.
- Dr. Spear recalls telling Ms. Jameson at a second meeting shortly after the April 25, 2013, meeting to press charges with the MPD against Mr. Level. In his May 2, 2013, response to an email from Ms. Jameson's mother, Dr. Spear again urged Ms. Jameson to press charges and gave her the name and phone number of counselling. Dr. Spear reported that since he thought that Mr. Level's off-campus conduct was not within the University's jurisdiction to investigate, he earnestly was suggesting that Ms. Jameson press charges so the matter could be investigated by the only entity that Dr. Spear believed could do an investigation, the MPD.
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] After Ms. Jameson agreed to file charges, Lt. Lehmitz obtained video from the bar where Mr. Level assaulted Ms. Jameson that proved Ms. Jameson's claims were accurate [REDACTED]. [REDACTED]
[REDACTED]
- [REDACTED] it is important to note that the Athletics Department did not have the authority to expel Mr. Level from school, a result Ms. Jameson and her coach wanted. Only the University, through its process, could do

that. [REDACTED]

[REDACTED] The head football coach called Ms. Jameson during the summer to inform her of [REDACTED], which she reported gave her the feeling of safety she needed to return to the school. The director of football operations, who kept detailed records for the coach, has passed away and his records of the time could not be found to determine the date of the coach's call to Ms. Jameson, although she recalled it occurred in June 2013.

- The initial communications with Ms. Jameson and her family by the Athletics Director did not show the sensitivity and compassion that a person who is trained in communicating with individuals who have suffered trauma and have fear of further interaction with the perpetrator would exhibit. We are not suggesting that everyone on campus should be trained to be experts in addressing these serious matters, but had Dr. Spear, others in the Athletics Department, or Officer Lehmitz known at the time to immediately report to Title IX coordinator, Ms. Jameson would have more quickly received the proper support, appropriate communication, and referral to survivor resources. (We understand this is the process today.) Although Ms. Jameson subsequently found those University resources after meeting with a counselor whom her mother discovered by independent research, the anxiety created for her and her family, even for a few days, could have been avoided had she immediately been introduced to the Title IX office.
- A further example of the Athletics Department's inadequate reaction to Ms. Jameson's allegations was the Athletics Director's response to an email sent by Ms. Jameson's parents expressing concern about the treatment of their daughter. In an April 27, 2013, email to Dr. Spear, Ms. Jameson's parents raised a number of concerns that could be expected by parents of a young woman who experienced traumatic sexual misconduct. Although he told the parents that Ms. Jameson could file charges and gave the name of a counselor, Dr. Spear's initial statements were defensive, rather than compassionate and understanding, while still advising the matter had to be investigated before action could be taken. At the least, before responding, we believe Dr. Spear should have recognized the legitimate concern of the parents for their daughter's safety and sought the advice of experts on campus who knew how to address such trauma. This question was raised in 2013 by then Title IX Coordinator Carmen Suarez.
- Based on our interview with Ms. Jameson, it appears her primary concern centers on the manner and attitude Dr. Spear handled this issue at the time and subsequently. She acknowledges that the Academic Coordinator and her coach, both of whom she respects, also did not know of or follow University and Title IX policies; however, she felt they were compassionate about her trauma. She also reported appreciation for the head football coach, even though she felt he initially was dismissive of her allegations,

for his call to her [REDACTED], during which he apologized for the trauma she suffered. She indicated the football coach also made a point to seek her out personally when she arrived back on campus after summer break to apologize in person. We believe if Dr. Spear had made the same effort as his head football coach by apologizing in person and without trying to explain how the University failures caused him to respond inadequately, the University may not have to address these issues five years later. An Athletics Director likely is viewed by student-athletes and parents as the primary face of the University administration. As such, taking an approach that problems resulted from University shortcomings, as if the he or she is separate from the institution, is unacceptable. Outwardly to those affected, the problems need to be owned by all University leaders, including the Athletics Director. Subsequently, the leadership can work internally to correct the educational and training issues, and clarify responsibilities.

Response by Other University Departments: Ms. Jameson did receive proper support and the University did investigate her allegations subsequent to her reports to the Athletics Department. We found:

- Ms. Jameson's mother discovered counseling services for Ms. Jameson . The counselor whom Ms. Jameson saw directed her to the campus Women's Center. The Women's Center escorted Ms. Jameson to the Dean of Students' Office and the appropriate report was made. All this occurred within ten days of her report of the assault to the Athletics Department staff.
- Two University Title IX investigators promptly began an inquiry into Ms. Jameson's [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] a hearing to determine responsibility for violating student conduct code was not held until October, 2013. The University Judicial Council determined at the hearing that Mr. Level was responsible for violating the sexual misconduct provisions of the student code and he was expelled from school.
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

2013 Investigation of the Athletics Department Response: Subsequent to Ms. Jameson's report to the Athletics Department and the report made to the Dean of Students office, the issue of whether those in Athletics responded appropriately was raised. Had this issue been fully treated at the time, perhaps it would have avoided the controversy this year that resulted in this inquiry. We found:

- [REDACTED]
- [REDACTED] On that date, Mr. Nelson also charged Senior Associate General Counsel Debra Ellers to conduct an investigation into the Athletics Department's initial response. She produced the draft report we attach as Appendix A. This appears to be where the analysis ended. We could not find a final report and no one recalled it being produced.
- Also, ostensibly, there was no determination based on this report of the failures by the University and in the Athletics Department relative to following Title IX, training and responding to allegations properly. Furthermore, Dr. Spears' reply to Ms. Jameson's parents initial email had not been evaluated, in spite of the Title IX Coordinator identifying it as a possible problem. If a critique of his response had been done (and assuming there were concerns similar to ours about it), Ms. Jameson and her family could have been appropriately contacted, proper apologies made, and corrective action taken at the time. Since the concerns of Ms. Jameson and others are centered primarily about the lack of support she felt from the Athletics Department, and specifically the Athletics Director, she and her family may have been adequately ensured of the University's commitment to improve soon after the incidents.

As we have seen in media, reports of institutions handling of sexual misconduct throughout the country reveal it took time for universities to implement the DCL guidelines. Idaho was no different. It is tempting to evaluate actions of five years ago from the prism of all the changes that have taken place since then, but it is not realistic. As noted below, the University of Idaho has improved its approach to these issues tremendously in the last five years. In addition, in this case, the shortcomings noted above did not result in a different ultimate outcome; objectively, there was a delay of a few days. Nonetheless, the lack of training and knowledge,

as well as the tone taken by Dr. Spears towards a traumatized student and her family, resulted in the matter being raised five years later and this inquiry.

Ironically, with the current heightened processes for responding to allegations of sexual misconduct, along with focus on due process for all involved, the result today may have been less satisfying for Ms. Jameson. Some Universities have disallowed the Athletics Department (or other units on campus) from taking action against an alleged perpetrator unless directed by those who are in charge of the case. The current Title IX Coordinator admitted the actions ██████████ processed by today's standards may have resulted in similar advice to the Athletics Department to not take unilateral action until the case concluded. ██████████

FINDINGS REGARDING ISSUE NO. 2: Was there improper influence exerted in Spring 2018 over student-athletes in the Volleyball and/or Women's Soccer programs to require support of the Athletics Director?

As has been reported in the media, the Tumblr post by Ms. Jameson preceptated an effort by the Associated Students of the University of Idaho (ASUI) to hold a meeting to consider recommending dismissal of Dr. Spear. In addition, a petition was circulating on campus for students to sign requesting that Dr. Spear be terminated. In advance of this April 4, 2018 meeting, Dr. Spear met with the female student-athletes to discuss the allegations by Ms. Jameson. Allegations were made indicating Dr. Spear had pressured the coaches of the women's soccer and volleyball teams, and possibly the student-athletes themselves, to support him.

During the week before final exams, we interviewed almost every member of the soccer and volleyball teams (25 soccer and 11 volleyball student-athletes). No soccer player reported feeling pressured by her coach or anyone else to support Dr. Spear. Three volleyball players reported that they felt some pressure by their coach not to sign a petition calling for the dismissal of Dr. Spear. None of the three believed their status on the team or grant-in-aid would have been affected if they disagreed with their coach. Those three players believed their coach was close to Dr. Spear and that she saw Dr. Spear as a significant supporter of the volleyball team and of women's athletics. They did not report receiving pressure from their fellow student-athletes, nor from anyone else, including Dr. Spear.

The soccer team members were unified in their support of Dr. Spear. When asked, however, each indicated that she would not have a problem with the coach or team by deciding otherwise. In fact, several of the student-athletes we interviewed were disgusted by what they felt was unfair and disrespectful treatment of Dr. Spear in an all-female student-athlete meeting by some of the other sports' athletes. Many indicated that they felt people came to that meeting, and the subsequent ASUI meeting, with their minds made up and unwilling to

hear both sides. Several of the female athletes attended the ASUI meeting and were angry that the ASUI would take a position since they were not part of the athletics program and would not be affected by a change in leadership, and noted those who were most critical about treatment of women athletes did not even support women's teams by attending games (or any games but football).

In summary, we did not find any improper influence applied by Dr. Spear to the coaches or athletes of those sports identified to require support of Dr. Spear.

IMPROVEMENTS AND OBSERVATIONS

As might be expected when someone serves for a long time in a role as high profile and important as an athletics director, there are conflicting viewpoints about leadership on various matters. Although not wide-spread, we found some who are critical about Dr. Spear's leadership, and particularly regarding a commitment toward the treatment of women. In addition, some on campus feel Dr. Spear attempts to improperly intimidate those who take contrary positions or challenge him. Those with such critical opinions seemed to apply those views to the handling of the incidents at issue.

On the other hand, there are those who have the view that Dr. Spear has been a very effective leader during difficult transitions and budget problems, and that he has been a strong supporter of women's athletics. One example of the differences of opinion we encountered was through our interviews of the three past Senior Woman Administrators: two were very complimentary of Dr. Spear's support and dedication to women's athletics and fair treatment of females. One was critical of him in that regard. It was outside of our scope to do a full evaluation of Dr. Spear's management style, but we felt it necessary to record these viewpoints as we believe they influenced some aspects of this case, especially the perceptions of Dr. Spear's handling of the matter. The University may consider addressing and, if possible, resolving these concerns as a future improvement.

Evidence revealed that Dr. Spear was committed after finding out of the policy misunderstandings related to Ms. Jameson's case to ensure that the Athletics Department would be trained about sexual misconduct and Title IX. Dr. Spear requested such training the very next semester (although we can't find evidence it was done that quickly). Some reported he was more engaged in seeking such training than other departments on campus. Those involved in detailed campus training didn't roll it out until the 2014-15 academic year. Since then, the Athletics Department has had significant training for sexual misconduct under Dr. Spear's insistence and leadership.

Since this matter involved a football player and there has been subsequent allegations about football culture, we felt it necessary to state that in the course of our investigation, several staff members and student-athletes indicated that the current head football coach has completely transformed for the better the culture of the team. Some of the female athletes reported the feeling that the football players protected them and made them feel safe, which was contrary

to the perception of the football student-athletes recruited by the previous staff. The football coach has taken a very strong stand with his team regarding any mistreatment of women.

In addition, since the unfortunate events of 2012-13, Idaho has improved its processes for investigating and adjudicating sexual misconduct. It has moved from a group of volunteer investigators to a professionally trained team, who continue to advance their understanding by attending educational conferences. We did not conduct a complete assessment of the University's policies and processes, nor did we assess the effectiveness of training for the Athletics Department. There are firms that do that work and Idaho may want to consider engaging one. In addition to evaluating response processes related to sexual misconduct, these firms also address the proper policies, procedures and practices to promptly respond to all forms of misconduct (such as bullying, hazing, discrimination and other violations).

In conclusion, the University has made vast improvements in its training and processing of sexual misconduct allegations. This is such an important function that continued attention must be given to this area, which the University seems committed to devoting effort to doing.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Witnesses interviewed:

Dave Lehmitz (DL), MPD, May 20, 2013 (by phone).

Rob Spear (RS), AD Director, May 20, 2013 (in person meeting in my office)

Paul Petrino (PP), Head Football Coach, May 20, 2013 (in person meeting in my office)

Susan Steele (SS), Athletics Academic Coordinator, May 27, 2013 (in person meeting in my office)

Mark Sowa (MS), Swimming Coach, May 28, 2013 (in person meeting in my office).

I took handwritten notes during all these interviews, then transcribed them on the same day, with the exception of PP's interview, which occurred late in the afternoon, and was transcribed the next morning.

Documents reviewed: File provided by RS on May 20, 2013, consisting of (1) a timeline prepared by MS, (2) a timeline prepared by PP, (3) handwritten notes of RS during a meeting on April 25, 2013 with DL, PP, MJ and SS; (4) a forwarded e-mail from SS dated May 8, 2013 to RS, which included an e-mail dated April 24, 2013 5:33 p.m. from MJ to SS, with a statement provided to DL, providing details of MJ's incidents with JL; (5) a letter dated April 27, 2013 from JoAnn and Ed Jameson, MJ's parents, to RS, which RS indicates was sent to a little-used e-mail address within the AD, and he did not receive until May 2, 2013; and (6) an e-mail from RS to Joann Jameson dated May 5, 2013 (Sunday) at 10:11 am, attaching behavioral policies that every student-athlete signs, which includes earlier e-mails dated May 5, 2013 from Joann Jameson and dated May 2, 2013 at 7:16 p.m. from RS explaining his involvement in the situation.

Copy of text messages between RS and SS on April 23, 2013, which RS provided on May 20, 2013.

MPD public records request response received May 28, 2013, consisting of (1) LAW Incident Table as of 5/21/13; (2) LAW Incident Offenses Detail, which shows file opened on 4/23/13 at 17:53 "Battery" (3) Narrative, which states as synopsis that "Mairin A. Jameson reported being touched in a sexual manner while at CJ's by Jahrie Level" and provides details about incident and witnesses interviewed, appears to be dated May 13, 2013; (4) Statement of Mairin Jameson (undated, but provided to Lehmitz the day after his initial meeting with MJ); (5) Witness statement for [REDACTED] dated 5-9-13; (6) witness

statement for [REDACTED] dated 5-9-13; (7) Witness statement for [REDACTED] dated 5-9-13; and (8) Witness statement for [REDACTED] dated 5-9-13. Included in the MPD response is a CD of the video from CJ's nightclub the night of April 20, 2013, which I did not view since that item was not reviewed by DL until on or about May 20, 2013, well after the DOS investigation began.

Based on my review of the documents and the witness interviews, the following is a chronology of the pertinent events and actions that occurred within the AD and MPD:

Chronology

Tuesday, 4-23-13. MJ showed up in SS's office without an appointment, SS believes in late morning.

SS knew MJ from prior interactions, but said MJ really didn't need any academic advising, as she's a straight A student. SS had made of point of discussing MJ's academic track targeting an early graduation date, because she was impressed with MJ's resourcefulness and intelligence.

At this meeting, MJ said she had something happen and hadn't told anyone else in authority, said she trusted SS to guide her. MJ described [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Then at CJ's nightclub the prior Saturday night, MJ said JL came up behind her, put his hand up her skirt and ran his fingers along her pantyline from front to back, she was very upset and left.

SS said they should call DL since event occurred off campus. [Investigator's Note: DL works games and travels frequently with the AD, and is well known to its staff]. SS called DL while MJ was in her office to set up a meeting—said something to the effect "There's a young lady here in my office that wants to talk to you," and a meeting was arranged for later that day. This first meeting with MJ lasted about ½ hr.

DL came later in the afternoon, around 5 pm, and met in SS's office with MJ. MJ related the same events as she had with SS earlier. DL said that since the CJ's incident was off campus, it couldn't be dealt with internally at DOS level, but the AD had more latitude since it frequently dealt with student athletes over off campus incidents. DL outlined options and process if MJ wanted to press charges, but left decision up to her. DL asked MJ for a more detailed statement [Investigator's note: MJ provided this statement the next day, April 24 to DL and SS, with details about events [REDACTED] off campus, and identified witnesses]. DL said he would call RS and PP. MJ said she wanted to meet with the 2 of them to tell them what happened to her. This meeting lasted about 45 mins.

After this late afternoon meeting, SS texted RS to see if was around, he was not—in Idaho Falls—they exchanged texts, but no substance discussed. DL called RS, and briefly described the allegations of MJ against JL, and opened an MPD file at 5:52 p.m.

DL also came by PP's office in the Kibbie Dome unannounced, PP's assistant Mark Vaught was there. Mark usually sits in on PP meetings with student athletes to keep notes on what is discussed. DL said MJ had contacted him about incident at CJ's, said JL had reached underneath her skirt and touched her underwear and ass. PP told DL he would be talking to JL.

[REDACTED]

8:30 p.m. MS (in Denver on recruiting trip) received text message from MJ, asking to set up time to call next day, arranged for 9 am PDT next day.

Wednesday, 4-24-13 .

RS returned to Moscow. RS did not contact anyone outside of AD, considered it internal since AD has historically dealt with issues that occurred off campus that Dean of Students (DOS) could not.

[REDACTED] DL believes he contacted either Erin Aguides, DOS, or Sharon Fritz of Counseling Center for information about classes to pass onto RS [Investigator's note: Confirmed with Sharon Fritz that she recalled a recent phone call from DL on this topic]. Learned about Brian Hopper "Community Standards" program designed to inform young men about societal expectations for interacting with women, recommended to RS.

9 am, phone call placed from MS to MJ. MJ details encounters with JL, starting with incident at CJ's, where JL approached her unaware from back, then placed his hand underneath her skirt, moving from the front of her underwear to the back. [REDACTED]

[REDACTED] and says she feels uncomfortable and unsafe. MJ informs MS that she had filed a report with MPD and DL, also talked to SS, and was setting up an appointment to talk to RS and PP, SS, and MPD.

[REDACTED]

5:33 p.m. MJ e-mailed SS a copy of her statement, indicated it had also been sent to "Dave" [presumably DL].

Thursday, 4-25-13. 12 noon, RS called MS to inform him of meeting scheduled with MJ later that day.

1 pm, Meeting in RS office, DL, PP, SS, MJ, and RS present. MJ relayed same events as she had to SS and DL. According to SS, MJ's demeanor was confident, feeling she was within her rights to pursue this complaint, and wanting the heads of the AD to know about these problems.

RS said if you feel you've been wronged, you need to press charges. RS, PP and DL discussed how they have daughters roughly her age, and would be upset if this happened to them. MJ said she didn't feel safe, "I want him gone." PP reluctant because said without you pressing charges, I have to take your word over his, [REDACTED]

[REDACTED] There were no decisions made at this meeting about the actions MJ should take, it was left up to MJ what she wanted to do.

Immediately after this meeting, DL, MJ and SS went to SS's office to reiterate support was there for MJ if she wanted to move forward with pressing criminal charges.

[REDACTED]

4 pm, MS called RS to find out the outcome of the earlier meeting, RS stressed the gravity of the situation, and his concern for the safety of student athletes, saying that if MJ wanted to press charges, she would have full support of the AD. [REDACTED]

[REDACTED]

[REDACTED]

MS cut his recruiting trip short that afternoon, and requested a meeting with RS, PP and DL, which was scheduled for 1 pm the next day. According to SS, in a phone call that day, MS was "livid." [REDACTED]

[REDACTED]

Friday, 4-26-13.

RS attended the Engineering Expo that morning, and believes he discussed this matter briefly with President Nellis before the 8:30 am ceremony to the effect that there was an "issue with a female swimmer and football player involving inappropriate touching at a night club— [REDACTED]

[REDACTED] No visible reaction or direction from President Nellis. (Investigator's note: Pres. Nellis confirms gist of statement from RS, but does not recall exact date or place. Recalls it being before the 4-27-13 letter from parents came to his attention in the early part of May).

12:15 pm. Meeting between MS and MJ in Mem. Gym office to discuss the events in person. MJ again detailed the events [REDACTED] the incident on 4-20, says [REDACTED] because she does not feel safe. MS suggested to MJ that she see a counselor professionally to deal with any PTSD symptoms.

1 pm. Meeting among RS, PP, MS, DL. DL stated that because the incident occurred off campus, the Student Code of Conduct wouldn't apply, alternatives were (i) disciplinary action taken by the dept or (ii) legal action taken by MJ. RS said let the process work. [REDACTED]

SS didn't attend, but saw attendees coming out. Body language indicated tension—heads down.

[REDACTED]

2 pm. Meeting between DL and MS to go over legal options available to MJ. MS asked if he could legally inform his team about the ongoing issue to give them accurate information and ensure their safety. DL said MS could, if MJ agreed.

2:20 pm. MS received call from RS, asked RS what he should tell the team. RS responded to tell the team the truth, and what steps the department has taken.

3 pm. MS called MJ, asked for her permission to discuss the situation with her teammates, she agreed.

Saturday, 4-27-13 10 a.m. MS met with members of the women's swim and dive team, informed them that MS had been sexually assaulted by JL, gave details of incident, and relayed the following:

- the AD was taking disciplinary action against JL;
- MJ still had option of pressing charges;
- members of the team should keep these matters confidential;
- members should avoid contact with the alleged assailant.

This is the date of the letter that JoAnn and Ed Jameson, parents of MJ, sent to RS expressing their concerns about how the AD had handled the matter. However, RS indicated that he did not receive it for several days, because it was sent to an e-mail account he doesn't monitor regularly, but uses to send out AD newsletters periodically--"uiathleticdirector@uidaho.edu." SS says she got a draft of the e-mail that JoAnn eventually sent to RS—SS was asked to review, but told JoAnn that this was from her heart as a parent, and SS didn't feel she could comment. SS did not have a role in transmitting the letter to RS. RS later commented to SS that he found the Jamesons' letter hurtful.

[REDACTED]

Tuesday, 4-30-13 MJ met with counselor at Student Counseling Center.

Thursday, 5-2-13 RS response to the Jamesons, disputing several comments attributed to him,

[REDACTED]

Friday, 5-3-13 MJ met with MS, told him that after talking with counselor, she went to Women’s Center, they recommended contacting DOS to file formal complaint against JL [REDACTED], which she was doing. MJ also said that she was planning to pursue criminal charges with MPD.

Additional information provided by witnesses for matters occurring after 5-3-13:

Sunday, 5-5-13 RS e-mailed Mrs. Jameson a copy of the AD behavioral policies every student athlete must sign, which includes sanctions for criminal offenses.

Sometime after the meetings, SS talked to Mrs. Jameson on MJ’s phone—she thanked her for helping MJ.

[REDACTED]

Appendix B

From: staff-list-bounces@uidaho.edu
To: [staff-list](#)
Cc: [Bird, Kenton](#); [Joyce, Paul](#); [Eckwright, Gail](#); [Thompson, Anna](#)
Subject: Presidential Action on University Policies
Date: Tuesday, June 19, 2012 1:25:45 PM

All Employees,

This notice is to communicate Presidential actions taken on policies passed at the University Faculty Meeting, April 24, 2012, available here:

http://www.webs.uidaho.edu/facultycouncil/pres_action.htm

The Presidential Action on University Policy page will be updated as appropriate and notice sent to the university community following receipt in the Faculty Secretary's Office of the President's action. Policy changes to the Faculty Staff Handbook (FSH) will be made upon final approval of the Board of Regents and/or effective date as noted on a specific policy, typically July 1.

This notice is required as per [FSH 1420 A-1 c. 2.](#), [FSH 1460 c. 2. ii.](#), and [FSH 1540 C.](#)

Gail Z. Eckwright, Faculty Secretary