

# Report of the Review and Determinations of the Regents of the University of Colorado and President Bruce Benson

## Concerning University Response to Report of Domestic/Dating Violence

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## Introduction

On December 9, 2016, University of Colorado Head Football Coach Mike MacIntyre had a telephone conversation with a woman (the “Complainant”) who told him she had repeatedly been physically abused by Joe Tumpkin, an assistant football coach. On January 6, the *Boulder Daily Camera* reported that the Boulder County District Court had entered a Temporary Protection Order against Tumpkin. The following Monday, January 9, the University of Colorado Boulder’s (“CU Boulder”) Office of Institutional Equity and Compliance (“OIEC”) initiated a preliminary inquiry into whether it had jurisdiction to pursue an investigation of Tumpkin’s alleged conduct, in that the Complainant was not affiliated with the university and all of the alleged incidents occurred off campus. OIEC closed its inquiry on January 30 following Tumpkin’s resignation.

On February 3, 2017, *Sports Illustrated* published an article detailing the Complainant’s allegations of abuse and raising questions about whether MacIntyre, Athletic Director Rick George, and CU Boulder Chancellor Philip DiStefano reported those allegations appropriately or whether they sought to avoid reporting so that Tumpkin could coach at the Alamo Bowl.

OIEC’s Executive Director, Valerie Simons, reports directly to DiStefano. Therefore, to avoid any conflict of interest or the appearance of a conflict, on February 14 Simons engaged the law firm Cozen O’Connor to “conduct an impartial, thorough, and prompt preliminary inquiry pursuant to applicable university policies and procedures regarding the failure to report allegations as identified by [OIEC].”

At the outset it appeared that University of Colorado President Bruce Benson and University Counsel Patrick O’Rourke had information relevant to the inquiry and that Cozen O’Connor would need to interview them. Accordingly, again to avoid any conflict of interest or the appearance of a conflict, Benson and O’Rourke both recused themselves, and, on February 16, the university retained Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”) to advise the Board of Regents. On March 27, after receiving an oral presentation from the Cozen O’Connor attorneys conducting the inquiry, the Board of Regents determined that Benson’s and O’Rourke’s involvement in the underlying case was too peripheral to warrant their recusal, cleared them to participate in the ongoing proceedings, and determined that the university’s decisions concerning the matter would be made by Benson in consultation with the Board of Regents. To ensure continuity and avoid any appearance of conflict, WilmerHale has continued to serve as the University of Colorado’s external counsel.

The Cozen O’Connor inquiry focused on how MacIntyre, George, and DiStefano responded to the information they received concerning the Complainant’s allegations, whether they complied with applicable laws and university policies, and what institutional measures the University of Colorado should institute in response to this matter.

On May 10, MacIntyre, George, and DiStefano were afforded an opportunity to review and comment on a draft evidentiary summary prepared by Cozen O’Connor. Cozen O’Connor then prepared a preliminary report, findings, and recommendations. MacIntyre, George, and DiStefano all reviewed the personnel document, as did President Benson and the Board. The University of Colorado is releasing Cozen O’Connor’s final report contemporaneously with this

report. As discussed more fully below, the university adopts the evidentiary summary, findings, and recommendations memorialized in the Cozen O'Connor Report. The university is also responsible for determining whether MacIntyre, George, or DiStefano failed to comply with *The Laws of the Regents* and whether MacIntyre or George, who have employment contracts with the university, violated any contractual obligations.

Finally, the university must decide, in light of the evidence and findings, what if any disciplinary measures to impose. To assist President Benson and the Board of Regents (collectively, the "Disciplinary Authority") in carrying out these responsibilities, Ken Salazar and Bruce Berman of WilmerHale and University Counsel O'Rourke heard from DiStefano, George, and MacIntyre individually on May 21. MacIntyre, George, and DiStefano also each made separate oral presentations to the Board and President Benson in Executive Session on May 22 and answered questions posed of them.

From the outset of OIEC's preliminary inquiry through the Cozen O'Connor review and the Disciplinary Authority's deliberations, the University of Colorado has been committed to providing due process to all parties. Due process generally requires that an employee subject to potential discipline receive "oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) The university believes it has met that standard. DiStefano, George, and MacIntyre (1) were interviewed on multiple occasions by Cozen O'Connor; (2) were invited to submit any documents they considered relevant; (3) reviewed and responded to Cozen O'Connor's draft evidentiary summary; (4) met with WilmerHale to discuss Cozen O'Connor's findings; and (5) met with the Disciplinary Authority and answered questions. None of the three has requested any additional procedural protections.

## **I. University Determinations**

### **A. *The Laws of the Regents***

*The Laws of the Regents* are the highest source of authority in the University of Colorado system and give voice to the Board of Regents' expectation that members of the university community will pursue the university's mission consistently with "ethical standards appropriate to their position within the university as defined in state law and regent policies." (Article 3.) The principles reflected in the *Laws* are given effect by university policies such as Administrative Policy Statement ("APS") 5014 – Sexual Misconduct. Cozen O'Connor found, and the university agrees, that DiStefano, George and MacIntyre each violated APS 5014 by failing to report information concerning the Complainant's allegations to the Title IX Coordinator or OIEC. As such, the Disciplinary Authority has concluded that each also violated *The Laws of the Regents*. As described in the Cozen O'Connor report, each also failed to comply with institutional and supervisory authority reasonably expected of him in light of his position, experience, and leadership role at CU Boulder and specifically with respect to sexual misconduct and intimate partner awareness, training, and enforcement. Significantly, however, while each erred in the judgments they made, the Disciplinary Authority did not find evidence that those errors were intentional or for an unethical purpose.

## **B. Employment Contracts**

Among other things, George’s contract obligates him to “[p]rovide outstanding leadership and management to the Athletics Department” and to “ensure that the mission and operations of the Athletics Department are carried out in a manner consistent with the . . . policies and procedures of the University[.]” The contract also requires George to report potential criminal conduct by members of the Athletics Department to law enforcement. The Disciplinary Authority has concluded that MacIntyre did not comply with his contract because he failed to report the Complainant’s allegations to the OIEC or to law enforcement. The Disciplinary Authority has also concluded that George did not appropriately supervise Tumpkin by failing to take appropriate steps to determine if Tumpkin posed a risk of harm to student or campus safety and by failing to ensure that Tumpkin was notified of the allegations against him in a way that maximized the Complainant’s safety,

Among other things, MacIntyre’s contract obligates MacIntyre to supervise the activities of the Football Program . . . in a manner that is consistent with the . . . policies of the University”; to maintain “responsibility for the supervision, evaluation, and conduct of the assistant coaches”; and to abide “by all applicable Board of Regents’ laws and policies and University of Colorado Boulder policies as may be in effect from time to time. The contract also requires MacIntyre to report potential criminal conduct by members of the football staff to law enforcement. The Disciplinary Authority has concluded that MacIntyre did not comply with his contract because he failed to report the Complainant’s allegations to the OIEC or to law enforcement. The Disciplinary Authority has also concluded that MacIntyre did not appropriately supervise Tumpkin by failing to take appropriate steps to determine if Tumpkin posed a risk of harm to student or campus safety and by failing to ensure that Tumpkin was notified of the allegations against him in a way that maximized the Complainant’s safety.

## **II. Institutional Measures and Sanctions**

APS 5014 states that “any violations may be subject to disciplinary action, up to and including, . . . termination of employment . . .” The fundamental requirement of the Policy is that the university take “prompt and effective steps reasonably intended to stop any form of *sexual misconduct*, eliminate any hostile environment, prevent its recurrence, and as appropriate, remedy its effects.”

Similarly, MacIntyre’s and George’s employment contracts provide that their employment may be suspended or terminated, provided specified procedures are followed, on various grounds. Both contracts provide that the employee may be suspended or terminated for “[v]iolation of any Board law, Board policy, or [University of Colorado Boulder] campus policy” or for failure to report “serious . . . Athletic Department staff misconduct [that the employee] knew or should have known about” “if the misconduct involves potentially criminal conduct.”

No applicable policies or contracts specify mandatory sanctions. Therefore, the Disciplinary Authority exercised its judgment in determining the sanctions to impose on the respective parties based on all of the relevant facts and circumstances. The range of sanctions that are typically imposed in the employment context include, in increasing order of severity: (1) informal counseling; (2) mandatory training; (3) formal reprimand; (4) probationary terms; (5) denial of raises or bonuses; (6) loss of supervisory authority or other duties; (7) unpaid suspension; (8) reduction of salary or other monetary sanction; (9) demotion; and (10) termination.

In exercising its judgment, the Disciplinary Authority considered a number of factors:

1. Bad intent is not a required element of any of the violations committed by DiStefano, George, and MacIntyre. An employee may intentionally or unintentionally violate a reporting requirement. The Disciplinary Authority considered it appropriate, for sanctioning purposes, to view mistakes differently from knowing or deliberate wrongful conduct. Even under the preponderance standard, the Disciplinary Authority did not find that DiStefano, George, or MacIntyre engaged in knowing or deliberate misconduct by not reporting the Complainant's allegations to the OIEC or law enforcement.

Specifically, the weight of the evidence did not show that DiStefano, George or MacIntyre sought, individually or collectively, to avoid their obligations to the University of Colorado. On the contrary, MacIntyre promptly reported the matter to George, as he had been instructed to do, and asked him how to proceed. George promptly reported the matter to DiStefano and sought his guidance on how to proceed. DiStefano reviewed the OIEC Process and Procedures to determine whether reporting was required. While he reached the wrong conclusion, there is no evidence that he did so in bad faith, and the OIEC has confirmed that this case raised issues of first impression. DiStefano also mentioned the matter to Benson and O'Rourke, which he likely would not have done if he were attempting to conceal his knowledge, although he did not do so promptly or in a manner that was likely to focus their attention on the reporting issue.

As mentioned above, DiStefano, George, and MacIntyre each met individually first with Salazar and Berman of WilmerHale and then with President Benson and the Board of Regents. All three explained their actions and answered all questions posed to them. Based on its opportunity to assess MacIntyre's, George's, and DiStefano's cooperation, candor, and credibility, the Disciplinary Authority concluded that, while each made significant errors in judgment, none acted in bad faith.

2. The policies and procedures relating to sexual misconduct and dating/domestic violence are complex and, in certain material respects, inconsistent with one another. For example, neither APS 5014 nor the CU Boulder Discrimination and Harassment Policy and Procedures provides that jurisdictional issues are to be decided solely by the OIEC rather than individual responsible employees. Although, as discussed below, the OIEC Process and Procedures does so provide, it is neither an Administrative Policy Statement nor a campus policy. Moreover, APS 5014 and the OIEC Process and Procedures are also not fully aligned with respect to what off-campus conduct falls within the university's jurisdiction.

In light of the complexity and lack of alignment of the operative policy and procedural documents, as well as the novelty of the factual scenario presented by the Complainant's allegations, it would have been difficult even for employees who had recently been trained and were fully conversant with the documents to navigate them successfully.

3. DiStefano's erroneous conclusion about the parties' reporting obligations should be considered in the light of (1) evidence that DiStefano believed that only one incident of domestic violence had been reported to MacIntyre, which occurred off campus at a location that had no connection to the University; and (2) the fact that whether a reporting obligation exists when the complainant is not a student or an employee and the alleged conduct occurred at an off-campus location not connected to an education program or activity presented a novel and complex issue. Paragraph 1 of the OIEC Process and Procedures "Jurisdiction" section provides that the document applies, as relevant here, only to "[c]onduct that occurs on or as it relates to University property or at official functions and University-sponsored programs conducted away from the campus," and to off-campus conduct that "has a potential continuing effect on campus . . ." It appears that DiStefano concluded, based on his understanding of the facts and his review of the above provision, that the allegations fell outside OIEC's jurisdiction. Paragraph 4 in the Jurisdiction section provides: "The University has an obligation and jurisdiction to conduct at least a preliminary inquiry to determine whether the alleged conduct occurred in the context of, or has continuing effects on, a University program, activity or employment." In other words, the jurisdictional issue was for OIEC, not DiStefano, to determine. But there is no evidence that DiStefano read the latter provision or that, if he did, he understood its import. He has since admitted that he should not have attempted to resolve the jurisdictional inquiry and should have referred the allegations to OIEC.

4. As noted in the Cozen O'Connor Report and reflected in documents provided by MacIntyre, the longstanding "custom and practice" in the Athletic Department, prior to this review, was that responsible employees discharged their reporting obligation by informing their supervisor. Moreover, although Regent Policy 1-C provides that, while employees are expected to report "violations of applicable laws and regulations to appropriate offices," it also specifies that "employees are encouraged to first report any known or suspected violations to their direct supervisor." MacIntyre informed George, as his direct supervisor, promptly after his first telephone conversation with the Complainant, and George informed DiStefano, as his direct supervisor, promptly thereafter. Nevertheless, these reports were not enough, and George and MacIntyre remained bound by APS 5014 and their own contracts, which required them to do more.

5. DiStefano, George and MacIntyre last received formal, documented online training on discrimination and harassment in 2013, and they were not required to receive any additional or refresher training thereafter. The online training that they received noted that responsible employees are required to report sexual misconduct, but it described the reporting obligation as triggered when the conduct occurs "on the Boulder campus." As described above, APS 5014 and the associated campus policies, applies only to off-campus conduct that has a continuing adverse effect upon the university. The training DiStefano, George and MacIntyre received did not address how the reporting obligation applies to acts perpetrated against non-affiliates or off-campus conduct that does not occur in the course of CU employment, educational programs, or activities.

Although the training the parties received in 2013 referred to dating and domestic violence as “[o]ther examples of unwelcome, criminal behaviors that are prohibited and should be reported,” it also described those as prohibited behaviors only when they occurred on the Boulder campus. The 2013 training also predated issuance of APS 5014 and the OIEC Process and Procedures. Moreover, although VAWA was enacted in March 2013, the implementing regulations were not finalized until October 2014 and did not go into effect until July 2015. Until then, federal law did not require institutions of higher education to develop and distribute policies concerning dating and domestic violence education and prevention or procedures for investigating and adjudicating reported instances of intimate partner violence not involving discrimination or harassment. Finally, as noted in the Cozen O’Connor Report, both Department of Education guidance and applicable university policies are unclear with respect to the obligations of campus security authorities to report “Clery crimes” that occur beyond the university’s Clery geography. Thus, while university officials are expected to understand and become familiar with legal and policy changes as they occur, the Disciplinary Authority recognized that the standards in this area have evolved since the parties’ most recent formal training and are still not self-evident in cases involving facts such as those with which DiStefano, George, and MacIntyre were confronted.

7. A number of other aggravating and mitigating factors were considered by the Disciplinary Authority. On the one hand: (1) none of the parties made a timely effort to avail themselves of subject matter experts within the University of Colorado, whether in the campus legal office or at OIEC, to clarify their obligations; (2) each of the employees expressed a desire for further information, but none took any action to obtain it, and, after MacIntyre blocked the Complainant’s phone calls and text messages on the advice of his personal counsel, the Complainant could not provide him further information; (3) MacIntyre and George should have given more careful consideration to whether to suspend Tumpkin pending an investigation of the Complainant’s allegations or a more reasoned determination of whether Tumpkin posed a threat to student or campus security; (4) MacIntyre and George should not have discussed the Complainant’s allegations with Tumpkin without considering if doing so could put the Complainant at heightened risk; (5) George should have referred any communications with Tumpkin’s counsel to the campus legal department; and (6) each of the parties failed to comply with the institutional and supervisory authority reasonably expected of him in light of his position, experience, and leadership role at CU Boulder and specifically with respect to sexual misconduct and intimate partner awareness, training, and enforcement.

8. On the other hand: (1) none of the parties has been subject to any prior discipline; (2) DiStefano, George and MacIntyre all fully cooperated with the review; (3) none of the parties sought to harm the Complainant; (4) MacIntyre promptly raised the matter with George, who promptly raised the matter with DiStefano; (5) after George provided information to DiStefano, DiStefano told him that he had reviewed the relevant policy and determined that nothing further needed to be done; (6) MacIntyre consulted with personal counsel before acting to block Complainant’s communications; (7) MacIntyre and George instructed Tumpkin not to have any contact with the Complainant; (8) the applicable policies were not drafted consistently; (9) none of the parties received formal, documented training after APS 5014 was revised; and (10) all of the parties have expressed their regret.

The Disciplinary Authority also endeavored to determine what sanctions have been imposed by CU Boulder in similar cases. Notwithstanding that MacIntyre, George, and DiStefano are all high-level employees, the Disciplinary Authority reasoned that its disciplinary decisions should be proportionate to discipline imposed in comparable circumstances. These appear to be the first cases at the Boulder campus involving violations of APS 5014 based on a failure to report alleged dating or domestic violence.

However, CU Boulder has disciplined employees for failure to report discrimination, sexual harassment, and retaliation. The sanctions imposed in cases involving failure to report such conduct since 2006 are summarized in the following table:

Description of Conduct	Year	Sanction
Female student reported she had been sexually assaulted. Employee did not report the alleged assault to any department.	2006	Letter of reprimand
Head coach failed to report alleged sexual harassment by assistant coach. Head coach issued a letter of reprimand to assistant coach, but did not report allegation to OIEC.	2006	Verbal reprimand
Faculty member alleged she was discriminated against on basis of race and gender. Dean failed to report her allegations to OIEC.	2007	Letter of Expectation
Female student reported concerns of sexual harassment by her supervisor to male faculty member, who was unresponsive, told her there was “no issue,” and failed to report the allegations to OIEC.	2009	Letter of reprimand
Female student reported concerns of sexual harassment by her supervisor to male faculty member, who was unresponsive, told her there was “no issue,” and failed to report the allegations to OIEC. <b>(Same case as immediately above/different employee)</b>	2009	Letter of reprimand
Female employee alleged male employee harassed her about her disability. Employee alleged a supervisor saw the harassment, did not intervene, and did not report the incident to OIEC.	2010	Letter of reprimand



Student employee alleged she informed supervisor that she felt sexually harassed by a manager. Supervisor did not report her allegations to OIEC.	2010	Suspension for 5 days and a reduction in pay of 10% for one month
Student employee alleged she informed supervisors that she felt sexually harassed by a manager. Supervisor did not report her allegations to OIEC. Student employee alleged that she made these allegations for over a year. <b>(Same case as above/different employee)</b>	2010	Dismissal and non-certification of classified employee
Former employee alleged that his supervisor made harassing comments about his race, color, and national origin and then fired him after he complained to higher office. Employee who received the complaint failed to report it to OIEC. <b>(Same employee had received prior discipline )</b>	2013	Resignation in lieu of termination
Student alleged he reported gender and sexual orientation harassment by another student to an employee who did not effectively address alleged harassment or report the issue and then retaliated against the student.	2013	Letter of reprimand and in-person training
Employee became aware of rumors that another employee was being subjected to sexual harassment in November but did not report to OIEC until the following February.	2013	Suspension for 5 days and letter of reprimand
Employee received an email indicating retaliatory behavior by a faculty member but failed to report the possible retaliation to OIEC.	2016	Removed from administrative position, but remains employed in other capacity
Employee received an email indicating retaliatory behavior by a faculty member but failed to report the possible retaliation to OIEC. <b>(Same case as immediately above/different employee)</b>	2016	Letter of expectation

After reviewing publicly available information, the University of Colorado was unable to identify any instances where another university has sanctioned employees for failing to report alleged off-campus dating or domestic violence perpetrated by a university employee against a non-employee or non-student in circumstances similar to those here.

Based on the above considerations, the Disciplinary Authority decided as follows:

**A. Institutional Measures**

As recommended in the Cozen O'Connor report, and pursuant to the University of Colorado's opposition to all forms sexual misconduct including intimate partner violence, its institutional commitment to high standards of conduct and integrity, and the necessity to provide clear and accurate directives to its employees:

- **Policies:** The University of Colorado will amend APS 5014 so as to clarify the obligation to report off-campus sexual misconduct, including domestic and dating violence, that adversely affects the health, safety, or security of any member of the university community. Campus policies shall be modified to conform to APS 5014.

The university shall adopt and implement an Administrative Policy Statement defining obligations under the Clery Act. Campus policies shall conform to such APS.

Any policies that impose substantive obligations applicable to all campus employees shall be adopted as campus policies through a formal policy process, rather than be implemented through unit policies.

- **Training:** All University of Colorado employees will receive online training upon hiring, which will include training on reporting sexual misconduct, including dating and domestic violence. All university employees will be required to renew their online training not less than every three years.

Whenever the University of Colorado modifies APS 5014 or any associated campus policies, responsible officials shall review the existing training to determine if it should be modified. If changes in APS 5014 or associated campus policies affect the responsibilities of members of the campus community, the responsible officials shall implement updated training in a timely manner and accelerate training renewals.

The University of Colorado will conduct an assessment to determine which operations present high risk exposure for discrimination or sexual misconduct, including dating or domestic violence. For those operations, the university will determine what additional training requirements are appropriate, with an emphasis upon in-person training.

All employees designated as Campus Security Authorities will receive online Clery Act training upon hiring. The University of Colorado Police Department will conduct an assessment to determine which additional training requirements are appropriate, with an emphasis on in-person training.

Any online training will be reviewed by the Office of University Counsel to ensure that it is accurate and consistent with legal obligations.

- **Structure:** The University of Colorado will review how its departments responsible for implementing university, campus, and other sexual misconduct and crime reporting policies interact with one another and will consider how information sharing and coordination by such departments can be improved.
- **Interactions with Outside Counsel:** University of Colorado employees have the right to consult personal counsel whenever they consider it appropriate. The university will advise employees that they are entitled to rely only upon advice provided by university counsel (or counsel that the university retains on their behalf) to fulfill their duties and responsibilities as employees of the University of Colorado.
- **Contracts:** Current term contracts reflect the expectation that employees will report misconduct to their superiors, as well as to law enforcement if the misconduct involves potentially criminal conduct. The University of Colorado will modify new term contracts to also provide that employees are also required to report allegations of sexual misconduct, including domestic and dating violence, to those personnel and offices responsible for investigating such allegations.
- **Response to High Impact Events:** When informed of events that have a potentially significant compliance, safety, financial, or reputational impact, appropriate university officials will convene affected constituencies to define expectations and determine responsibilities.
- **Awareness:** The University of Colorado will initiate an awareness campaign highlighting dating and domestic violence, the reporting obligations of responsible employees and campus security authorities, and the resources available to victims.

## **B. Remedial Measures**

### **1. Chancellor DiStefano**

- Chancellor DiStefano, based upon the findings in the Cozen O'Connor report, has acknowledged his responsibility and, as the chief executive officer of the Boulder campus, proposed to the Disciplinary Authority that it suspend his employment without pay for a period of ten business days. The Disciplinary Authority determined that this was an appropriate remedy and accepted Chancellor DiStefano's proposal.
- The University of Colorado will donate the salary that Chancellor DiStefano would have otherwise have earned during this period of suspension to programs that support students and employees in the CU Boulder Community who are victims of domestic or dating violence.

- President Benson will issue a letter of reprimand and expectations to Chancellor DiStefano. The letter will specify that he violated APS 5014 and Regent Policy 1(C) and failed to exercise the institutional and supervisory authority reasonably expected of him in light of his position, experience, and leadership role at CU Boulder and specifically with respect to sexual misconduct and intimate partner awareness, training, and enforcement.
- President Benson will issue directives to Chancellor DiStefano to implement the reforms described as institutional remedial measures recommended in the Cozen O'Connor report and set forth above.
- Chancellor DiStefano will be required to receive in-person training, including sexual misconduct and intimate partner violence and associated reporting requirements, no later than August 1, 2017, and to renew the training at least once a year thereafter.

## **2. Athletic Director George**

- Athletic Director George and the Disciplinary Authority have agreed that he will contribute the amount of \$100,000 to programs that support students and employees in the CU Boulder community who are victims of domestic or dating violence.
- President Benson will issue a letter of reprimand and expectations to Athletic Director George. The letter will specify that he violated APS 5014 and Regent Policy 1(C) and failed to exercise the institutional and supervisory authority reasonably expected of him in light of his position, experience, and leadership role at CU Boulder and specifically with respect to sexual misconduct and intimate partner awareness, training, and enforcement.
- President Benson will issue directives to Athletic Director George to implement the reforms described as institutional remedial measures in the Cozen O'Connor report and set forth above
- Athletic Director George will be required to receive in-person training, including sexual misconduct and intimate partner violence and associated reporting requirements, no later than August 1, 2017, and to renew the training at least once a year thereafter.

## **3. Coach MacIntyre**

- Coach MacIntyre and the Disciplinary Authority have agreed that he will contribute the amount of \$100,000 to programs that support students and employees in the CU Boulder community, and the community at large, who are victims of domestic or dating violence.

- President Benson will issue a letter a letter of reprimand and expectations to Coach MacIntyre. The letter will specify that he violated APS 5014 and Regent Policy 1(C) and failed to exercise the institutional and supervisory authority reasonably expected of him in light of his position, experience, and leadership role at CU Boulder and specifically with respect to sexual misconduct and intimate partner awareness, training, and enforcement.
- President Benson will issue directives to Coach MacIntyre to implement the reforms described as institutional remedial measures in the Cozen O'Connor report and set forth above.
- Coach MacIntyre will be required to receive in-person training, including sexual misconduct and intimate partner violence and associated reporting requirements, no later than August 1, 2017, and to renew the training at least once a year thereafter.

### **Conclusion**

DiStefano, George and MacIntyre all should have known that they were responsible for reporting the Complainant's allegations to the Title IX Coordinator or OIEC so that OIEC could determine whether it had jurisdiction and, if so, conduct an investigation and offer resources and support to the Complainant. They all should have exercised their institutional and supervisory authority in a manner commensurate with their positions and with the seriousness of the Complainant's allegations. MacIntyre and George also should have known that they were contractually required to report Tumpkin's alleged conduct to law enforcement. Had the parties reported the allegations as required, the University of Colorado could have, among other things, reached out to the Complainant sooner, made her aware of the resources available to her, and communicated clearly that the university does not and will not tolerate sexual misconduct of any kind, including dating and domestic violence.

The seriousness with which the University of Colorado takes dating and domestic violence is reflected by its retention of Cozen O'Connor to conduct an independent review, its public release of the Cozen O'Connor Report, the significant sanctions imposed on the parties, and its directives to implement the institutional remedial measures summarized in the Cozen O'Connor Report and set forth above. The decision of Coach MacIntyre, Athletic Director George, and Chancellor DiStefano to accept, without objection or appeal, the sanctions imposed by the Disciplinary Authority reflects their acknowledgment of responsibility and commitment to play a leadership role in the university's continuing efforts to combat sexual misconduct and intimate partner violence.