





1 Prior to the commencement of the administrative hearing the  
2 undersigned administrative hearing officer issued two orders.  
3 The first order, issued on November 25, 2007 denied Respondent's  
4 Motion to Dismiss, granted Petitioner's request for a Discovery  
5 Conference<sup>4</sup>, and granted Petitioner's request to amend the  
6 Whistle Blower Complaint to include an alleged sexual harassment  
7 as an additional disclosure of improper governmental action. On  
8 December 10, 2007 the undersigned administrative hearing officer  
9 issued an order denying Petitioner's request to order the  
10 Respondent to cease and desist from advertising for a new Head  
11 Women's Soccer Coach while the instant Whistle Blower Complaint  
12 is pending.

13  
14 **THE WHISTLE BLOWER COMPLAINT**

15 In accordance with the requirements of NRS 284.641, the  
16 Whistle Blower Complaint described the specific allegations of  
17 alleged improper governmental action; described when and to whom  
18 the alleged improper governmental actions were disclosed; and  
19 described the reprisal or retaliatory action.

20 Petitioner described the specific factual allegations of  
21 improper governmental conduct as follows:

22 "Appellant provided specific factual  
23 allegations regarding violations of NCCA  
24 Rules/Regulations and Title IX requirements  
25 within the University of Nevada-Reno

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<sup>4</sup> A Discovery Conference was held on November 27, 2007.

1 Athletics Department as well as serious  
2 violations of the University of Nevada  
3 Ethics Code as committed and/or permitted to  
4 occur by Director of Athletics Cary Groth,  
5 Executive Associate Athletics Director Cindy  
6 Fox, Associate Athletics Director Keith  
7 Hackett, Mens (sic) Golf Head Coach Rich  
8 Merritt and Assistant Football Coach Cameron  
9 Norcross."<sup>5</sup>

10  
11 Petitioner described the governmental conduct as follows:

12 "The specific factual allegations were  
13 disclosed on May 21, 2007, June 25, 2007,  
14 and August 7, 2007, in writing to Executive  
15 Associate Athletics Director Cindy Fox; and  
16 on June 25, 2007, and August 28, 2007, to  
17 Director of Athletics Groth."

18  
19 Petitioner described the reprisal or retaliatory action as  
20 follows:

21 "On August 28, 2007 Appellant's contract  
22 with the University of Nevada-Reno was  
23 terminated on sixty (60) days notice without  
24 cause. She was told although she was a  
25 'great coach' that she was a less than  
perfect employee. This termination occurred  
one week after appellant was offered a  
contract extension for 2 ½ years and  
approximately one year after Appellant was  
offered a three year contract extension.  
The only events which occurred between the  
two contract offers were that Appellant  
coached her team to the Championship of  
Western Athletic Conference Post-Season  
Tournament, her team earning the first NCAA  
Womens (sic) Soccer Tournament berth in  
school history, and Appellant's  
Whistleblower activities. At the time of

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24 <sup>5</sup> Attached to the Whistle Blower Complaint is a detailed description of the  
25 alleged NCAA violations and Title IX violations. Additionally, as discussed  
below, Petitioner was allowed to amend the Whistle Blower Complaint to  
include allegations that Petitioner disclosed that she was sexually harassed  
by Mark Fox, the Men's Basketball Coach.

1 her termination, Appellant had the most  
2 successful Womens (sic) sports program at  
3 the University. Appellant had met all  
4 performance standards for her position at  
5 the time of her termination.

6 Appellant's contract was terminated on  
7 August 28, 2007 by Director of Athletics  
8 Cary Groth, who is close friends with  
9 Assistant Athletic Director Keith Hackett  
10 and Mens (sic) Golf Coach Rich Merritt.  
11 Appellant was two weeks into the current  
12 season when her contract was terminated and  
13 is the only coach at the University of  
14 Nevada-Reno to have been terminated during  
15 an athletic season."

16 The alleged NCAA violations are described in detail in the  
17 Whistle Blower Complaint as follows:

18 "The following allegations have been brought  
19 to my attention regarding Rich Merritt, head  
20 men's golf coach.

21 New Mexico State Tournament, Oct. 16-18,  
22 2006:

23 Coach Merritt was leading the women's team  
24 as Coach Dansie was on maternity leave.  
25 Coach Merritt gave the team their full trip  
per diem at the beginning of the trip. He  
then told them that if they played well he  
would take them out to dinner. He ended up  
taking them to a nice restaurant for dinner  
and paid for it himself. They exceeded  
their per diem by "double dipping."

Coach Merritt likes to place side bets with  
his student-athletes. Example - - on this  
trip he bet Melanie De Leon \$10 if she would  
"huck a loogie". He also bet her another  
\$20 that she would not eat some food that a  
teammate had chewed and spit back out. She  
did both and was paid. Melanie later stated  
in front of several people that she "made a

1 killing off Merritt on the New Mexico State  
2 trip."

3 Other allegations:

4 Coach Merritt is a heavy gambler. He has  
5 admitted to gambling on professional and  
6 collegiate football and basketball. He  
7 regularly hangs out at sports books. He  
8 initially frequented the former Hilton but  
9 felt it was too risky so he has changed to  
10 smaller casinos (where he is less likely to  
11 be seen.)

12 He pays men's and women's golfers well over  
13 standard babysitter pay when they sit for  
14 his kids.

15 There is apparently an NCAA rule that  
16 prohibits NCAA golf programs from paying for  
17 range balls for their golfers if it is not a  
18 "required practice." Coach Dansie addressed  
19 this rule with her athletes. Coach Merritt  
20 later told the female golfers that there is  
21 a way around the rule and if Coach Dansie  
22 does not do it for them he will.

23 Coach Merritt gave one of his personal  
24 frequent flyer airline tickets to his  
25 golfer, Chase Cooper, in May of 2007. Chase  
used the ticket to attend a golf tournament  
(US Open Qualifier) this summer. While  
acknowledging it was illegal, Coach Merritt  
was heard saying that nobody will find out  
about it."<sup>6</sup>

Petitioner reported the alleged NCAA violations to  
Cindy Fox on June 25, 2007. UNR investigated the allegations.  
Coach Merritt was suspended for three tournaments. There is

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<sup>6</sup> Exhibit 1, p. 2

1 also testimony that the NCAA is investigating the gambling  
2 allegations.

3       The alleged Title IX violations were described by  
4 Petitioner as follows:

5           "Locker room - being told we cannot use it  
6 for our own home soccer games on the Friday  
7 evenings when football has a Saturday home  
8 game. We are told we cannot use it because  
9 the visiting football team has to store  
their equipment in there. I argue yearly  
about this. I lost the first two years and  
have won arguments the next two years on it.

10          Locker room - was sent an email this last  
11 spring telling me that we could not use our  
12 locker room for some 30+ days because the  
13 visiting baseball teams would have it when  
14 we hosted home baseball games. I once again  
15 had to argue this was completely wrong.  
16 That is 1/3 of our spring season and is  
17 during track's competitive season. The  
18 locker room is shared by soccer and track.  
19 We had to allow them access a dozen times on  
20 the weekend.

21          Locker room - track and soccer were kicked  
22 out of the locker room for 2.5 weeks this  
23 summer for football camp. I was out of  
24 town. When I returned I demanded answers as  
25 to why football did not use their own locker  
room when it was right next to ours. I did  
not get answers so I finally sent a formal  
complaint/memo to the administration. The  
administration (Keith Hackett and Cindy Fox)  
was not happy about it.

        Keith Hackett told me we had to move our  
practice to another field because football  
wanted to change practice sites. I said no  
problem. He then told me to fill out the  
paperwork for the change. I told him I was  
not the football secretary and there was no

1 way I was going to do the paperwork for  
2 them.

3 We had to train and compete daily on what I  
4 refer to as painted concrete. There is no  
5 more cushion left on Mackay Stadium. It is  
6 a dangerous surface for soccer players. Our  
7 player's legs are cut up daily from it.  
8 Football gets the choice of fields and  
9 chooses much better surface at Wolf Pack  
10 Park. I requested football to move there  
11 (sic) practice time by 30 minutes. I would  
12 move mine by 1 hour. This would allow  
13 soccer to use the better field as well.  
14 They said no. I received no help from the  
15 administration on this.

16 One of my student-athletes was told to get  
17 off a rack in the weight room by a football  
18 player because he said he had priority.

19 I reported expressed frustration by my  
20 student-athletes that they felt the weight  
21 room was closed near the end of the summer  
22 because football was done lifting. Some of  
23 my student-athletes felt the hours operated  
24 around the football team only. Football was  
25 done lifting so the weight room closed for  
the day....despite the posted hours stating  
differently.

15 coaches of men's sports have courtesy  
cars compared to 5 coaches of women's sports  
(16 males to 4 females). We also have a 4  
to 1 male/female car ratio among  
administrators.

Extended Studies complaint - some sports  
have to pay extended studies to do their  
camps. Softball and baseball do not. I  
expressed this unfair inequity dozens of  
times to Cindy Fox in my 3+ years there. I  
wrote it to Cary Groth in the letter I gave  
her on August 26, 2007. I explained that it  
has cost me over \$20,000 to use extended  
studies in my 4 years of camps while some

1 coaches do not have to pay a single dollar  
2 to them. It was part of my negotiation.

3 Graeme Abel, Soccer Assistant, was the last  
4 employee in the department to be elevated to  
5 100%. He was 77% previously. I had to ask  
6 the administration in early July to push him  
7 up to 100%. They did not oblige. I did ask  
8 why soccer was the last sport to go full-  
9 time even though we were not the last sport  
10 added. This was in one of the negotiation  
11 letters.

12 5 different male coaches of men's teams  
13 walked out in the middle of our practices  
14 and started training their teams or  
15 individuals. I let them know how  
16 disrespectful it was and repeatedly kicked  
17 them off. It was a huge issue that was only  
18 addressed with a "I am sure they did not  
19 mean anything by it." This was a daily  
20 occurrence for us and the administration  
21 never made a substantial effort to curtail  
22 it.

23 Keith asked me in the middle of my camp to  
24 share the field with football so they could  
25 condition. I told him that it was a PR  
nightmare and that I had the field reserved.  
If you would not ask football to do it do  
not ask me. Do not put me in a bad light  
because football/strength coach did not  
reserve space."<sup>7</sup>

19 On August 10, 2007, Ms. Fox sent Petitioner the following  
20 memo in response to the complaint regarding the use of the  
21 facilities filed by Petitioner against Coach Cameron Norcross<sup>8</sup>:

22 "This is in response to your memo of August  
23 7, 2007 making a complaint against Cameron  
24 Norcross, assistant football coach.

25 <sup>7</sup> Exhibit 1, pps. 3-4.

<sup>8</sup> Exhibit 4, p.103 is the formal complaint filed by Petitioner against  
Assistant Football Coach Cameron Norcross.

1  
2 After receiving your memo, I asked Keith  
3 Hackett, Associate Athletic Director for  
4 facilities and game operations, which has  
5 oversight of football, to respond. After  
6 meeting with Cameron Norcross and Ken Wilson  
7 he prepared the attached response.

8  
9 Additionally, you referred to the track staff  
10 and team in your memo, so I asked Head Coach,  
11 Shantel Twiggs for her feedback regarding the  
12 issue as well. Three student-athletes were  
13 unable to use the locker room on four  
14 separate days, but were able to access their  
15 belongings. She characterized it as an  
16 inconvenience not disrespect for her staff or  
17 student-athletes. After the camp Coach  
18 Twiggs discussed the issue with Keith  
19 Hackett. Keith accepted full responsibility  
20 and apologized for not informing the users of  
21 the locker room in advance of the camp. She  
22 felt comfortable that everything was handled  
23 properly.

24 We have also addressed the following issues:

- 25 1. Prior to summer camps we will check on  
26 facilities that may still be in use for  
27 training by Nevada student-athletes and  
28 accommodate those needs first. Please  
29 note that we share our facilities and we  
30 must work together to make the best use  
31 of all our facilities.
- 32 2. Keith has spoken to Cameron about the  
33 need to respond to emails. I am  
34 confident that he will do so.
- 35 3. If the missing equipment (cones) have  
36 not turned up please let me know and I  
37 will replace them.

38 It is always our intent to be responsive to  
39 the needs of all of our coaches and student-  
40 athletes."<sup>9</sup>

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<sup>9</sup> Exhibit 4, p. 106. See also, Exhibit 4, pps. 107-112, the emails that were exchanged regarding these issues.

1           The alleged sexual harassment involved Head Basketball  
2 Coach Mark Fox. The incident occurred at a wine tasting  
3 fundraiser in May of 2005 at the Reno Events Center. Petitioner  
4 was walking with Devin Scruggs (the Women's Volleyball Coach)  
5 toward Mr. Fox, who was with his wife Associate Executive  
6 Athletic Director Cindy Fox. Mr. Fox said words to the effect  
7 of "looks like you two are on a date." Petitioner believes that  
8 since Ms. Scruggs and she are females that the words were  
9 sexually offensive.  
10

11           Petitioner believed that Mr. Fox did not like her. She  
12 informed Ms. Groth of this and the statement Mr. Fox made to  
13 Petitioner. Ms. Groth asked Mr. Fox if he would be willing to  
14 talk to Petitioner about this matter. Mr. Fox sent the  
15 following response via email on June 26, 2006 to Petitioner:

16                   "Hey Terri, sorry for the delay - we just  
17 finished up camp. You know as a successful  
18 coach how crazy the days can get. Thanks  
19 for the invitation [to talk] but I'm going  
20 to decline at this time. I met with Cary  
and explained that I think it is best that  
everyone just move forward and focus on our  
teams."<sup>10</sup>

21           Ms. Groth also sent the following email to Petitioner on  
22 June 26, 2006:

23                   "Hey, Terri,  
24

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25           <sup>10</sup> Exhibit 3, p. 146

1 Sorry I took so long in responding... I took a  
2 break from the email all weekend.

3 Mark talked with me after he got your email  
4 and I told him I thought it would be good if  
5 the two of you talked. I shared with him  
6 that this is "not just about the DT  
7 [Dedrique Taylor] situation, it's about some  
8 issues/concerns" Terri wants to share with  
9 you. He really doesn't want to and feels it  
10 best to just move forward.

11 I am sorry that it did not work out to visit  
12 with him, however, I do feel that he just  
13 wants to put the past behind and move on.  
14 If that is possible."<sup>11</sup>

15 It is unclear as to whether Petitioner described the  
16 incident as a "sexual harassment" or whether she merely told Ms.  
17 Groth that she was uncomfortable with the comments. Petitioner  
18 did not report the alleged sexual harassment to any UNR  
19 official. It was not discussed again until the Whistle Blower  
20 Complaint was filed.

21 **RESPONDENT'S RESPONSE TO THE WHISTLEBLOWER COMPLAINT**

22 Respondent asserts that it properly responded to the report  
23 of alleged NCAA violations and the alleged Title IX violations.  
24 Respondent further asserts that although Petitioner did mention  
25 the comment of Mark Fox to Ms. Groth, Petitioner never reported  
the incident as sexual harassment.

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<sup>11</sup> Exhibit 3, p. 145

1 Respondent also asserts that Petitioner was not fired for  
2 disclosing allegations of improper governmental conduct.  
3 Rather, Respondent asserts that Petitioner was terminated  
4 because of (1) Petitioner's failure to follow directives; (2)  
5 lack of trust and confidence in Petitioner; and (3) Petitioner's  
6 numerous threats to resign.

7 **Petitioner's Job Performance at UNR**

8 The testimony of the witnesses<sup>12</sup> and the exhibits admitted  
9 into evidence describe the history of the employment of  
10 Petitioner by Respondent.  
11

12 Petitioner's Personnel Service Jacket<sup>13</sup> contains the  
13 following performance evaluations:

14 January 2004-December 2004: Commendable  
15 January 2005-December 2005: Commendable<sup>14</sup>  
16 January 2006-December 2006: Commendable

17 A Commendable rating is the second highest evaluation that  
18 a coach at UNR can receive. There was testimony that the  
19 highest rating, Excellent, is rarely given to a UNR coach.

20 There is evidence that during Petitioner's tenure as Head  
21 Women's Soccer Coach at UNR the won-loss record of the Women's  
22 Soccer team improved significantly. There is also evidence that

23 <sup>12</sup> The testimony of the individual witnesses is discussed in detail  
hereinafter.

24 <sup>13</sup> Exhibit 2

25 <sup>14</sup> Exhibit 4, pps. 2-4 contains an unsigned Performance Evaluation for this  
period indicating that Petitioner received a Satisfactory evaluation whereas  
Exhibit 2 contains a signed Performance Evaluation with a Commendable  
evaluation. The categories are Unsatisfactory, Satisfactory, Commendable and  
Excellent.

1 UNR Athletic Department Officials believed that Petitioner was a  
2 "great coach". The players on the Women's Soccer team received  
3 good grades and were generally above average student-athletes.  
4 There is no indication that Petitioner violated any UNR or  
5 National Association of Intercollegiate Athletic ("NCCA") rules  
6 or regulations.

7  
8 Petitioner's tenure at UNR was not, however, without  
9 significant turmoil and controversy. As part of Petitioner's  
10 January 2005-December 2005 performance evaluation, it was  
11 indicated that the following areas required improvement on the  
12 part of Petitioner:

13 **"Must focus on ability to deal with**  
14 **adversity, on and off the field in a**  
15 **professional manner.**

- 16 ➤ **Maintain composure and poise in adverse**  
17 **situations.**
- 18 ➤ **Work with administration to follow**  
19 **proper administrative protocol when**  
20 **necessary.**
- 21 ➤ **Maintain a professional working**  
22 **relationship with those associated with**  
23 **institution and conference.**
- 24 ➤ **Ask for help and/or guidance when**  
25 **needed."**<sup>15</sup>

Petitioner's January 2006-December 2006 Performance  
Evaluation contains the following:

**"When faced with a challenging scenario, it**  
**is imperative to redirect energy toward a**

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<sup>15</sup> Exhibit 2

1 more positive outcome rather than revisiting  
2 the details of a difficult situation.”<sup>16</sup>

3 The January 2006-December 2006 performance evaluation also  
4 identified the following as areas for improvement:

5 “Due to the increased competitiveness of the  
6 soccer program, increased communication and  
7 feedback with student athletes might be  
8 necessary.

9 Continue to focus on ability to deal with  
10 adversity, on and off the field in a  
11 professional manner.

- 12 ➤ Maintain composure and poise in adverse  
13 situations.
- 14 ➤ Work with administration to follow  
15 proper administrative protocol when  
16 necessary.
- 17 ➤ Maintain a professional working  
18 relationship with those associated with  
19 institution and conference.
- 20 ➤ Ask for help and/or guidance when  
21 needed.”<sup>17</sup>

22 According to Respondent, the areas for improvement were  
23 originally identified because of Petitioner’s allegedly  
24 unprofessional reaction to a tie breaking procedure used by the  
25 Western Athletic Conference (WAC) to determine seeding for the  
26 conference tournament. Respondent believed that Petitioner had  
27 acted unprofessionally toward WAC Staff. The areas for  
28 improvement were also identified based on certain evaluations of

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29 <sup>16</sup> Exhibit 2

30 <sup>17</sup> Exhibit 2

1 Petitioner by student-athletes. One of the evaluations was as  
2 follows:

- 3 1. "Good coach, Good recruiter. But has  
4 problems with managing team fairly and  
efficiently.
- 5 2. The main complaint I have is that I  
6 was struggling at practice this year and I  
7 rarely to never got feedback on what I can  
8 do to be better. They put the players who  
9 were not the stars this year on the back  
10 burner which was very frustrating. There  
11 were many practices where I barely took part  
12 and practice is the time where they should  
13 be working to improve all their athletes and  
14 not just the star players. But on a  
positive note she gets the job done--  
Great recruiter, she brings great players to  
help maintain high competition standards.  
She is a good coach. She really understands  
the game and what it takes to accomplish  
that, but sometimes she gets to (sic) close  
to the problem to understand how to fix  
it."<sup>18</sup>

15 Another student-athlete provided the following evaluation  
16 of Petitioner:

- 17 1. "My coach was completely  
18 disrespectful not only to many players on  
19 my team, but also to other WAC coaches and  
20 to WAC board members. She also uses foul  
21 language all the team (sic), even when it  
22 is extremely unnecessary and quite frankly  
23 was an embarrassment to our entire team.  
24 The only thing I commend her for is her  
25 ability to recruit good players. Other  
than that, I would not commend her on any  
coaching techniques. I would definitely  
not recommend this sport program to  
anyone.

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<sup>18</sup> Exhibit 4, p. 64

1           2.       We broke the NCAA rules a few times  
2           by practicing every single day for a few  
3           weeks. We also did go over 20 hours a  
4           couple times as well. I think Terri  
5           knows alot (sic) about the game, but  
6           forgets that we have more than just  
7           soccer in our lives. Sometimes it feels  
8           when family problems or other hard things  
9           are going on outside of soccer, she  
10          thinks that it is not important. Other  
11          times her temper gets in the way and  
12          these things cause her to not do as well  
13          of a job. I think if she relaxed more,  
14          and learned to control her anger she  
15          would be a much more effective coach.<sup>19</sup>

16                Although some student-athletes did have issues with  
17          Petitioner, many also praised Petitioner. The following is an  
18          example of a student-athlete who had a very positive experience  
19          with Petitioner:

20                Dear Terri,  
21                I wanted to thank you for being a wonderful  
22                coach and for a magnificent season. I am so  
23                glad that I can leave the program with it  
24                going in the right direction. I can not  
25                tell you how much that means to me. The  
26                team is very luck (sic) to have a coach that  
27                cares about us on and off the field. If you  
28                ever need anything from me just let me know.

29                I also wanted to thank you for all the  
30                goodies at the beginning of the season.<sup>20</sup>

31                Many parents of potential student-athletes expressed  
32          concern when they learned of Petitioner's termination. The  
33          following is an example of a note from a parent:

34                "Cindy Fox  
35                \_\_\_\_\_

<sup>19</sup> Exhibit 4, p. 11

<sup>20</sup> Exhibit 3, p. 19

1 Executive Associate Athletic Director

2 Dear Ms. Fox:

3 Terri Patraw's been a role model at Nevada -  
4 on and off the Soccer field - to the student  
5 athletes who have had the opportunity to  
work with her.

6 It remains my hope that Casey, my soccer  
7 playing daughter, will have that opportunity  
in 2008.

8 Please ask Ms. Groth to consider the  
9 negative impact her unfortunate decision  
10 releasing Ms. Patraw already has had on  
11 Nevada's soccer program. Isn't she supposed  
to look out for student-athletes, not hurt  
them?

12 Why would any college bound student-athlete  
13 want to risk institutional hazards (sic)  
spontaneously created by institutional  
14 bureaucrats like Ms. Groth?

15 With Patraw gone, how else is the AD going  
to celebrate mediocrity.

16 Please do your best to turn this around.  
17 Thanks."<sup>21</sup>

18 **Incidents with Assistant Basketball Coach**

19 In addition to the areas for improvement listed on the  
20 performance evaluations, there was a series of incidents  
21 involving Petitioner and Dedrique Taylor, former Assistant  
22 Basketball Coach at UNR. It appears that Petitioner had a  
23

24  
25  

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<sup>21</sup> Exhibit 3, p. 63

1 relationship with Mr. Taylor at the same time Mr. Taylor was  
2 seeking a similar position at Arizona State University.

3 On June 3, 2006, Mark Fox, UNR Head Basketball Coach,  
4 received the following anonymous e-mail from "Pack Donor":

5 Coach Fox, I am writing to offer a \$25,000  
6 donation on behalf of keeping Coach Taylor  
7 in the fold. The only stipulations are that  
8 the money is donated 100% to his salary and  
9 that he stays through the 2006-07 season. I  
10 was unaware that anything was in the works  
11 with another potential employer or I would  
12 have stepped up sooner. I will cut a check  
13 in full within 48 hours of an announcement  
14 that he is staying (should that be the  
15 case). You can give him the full \$25,000 in  
16 lump sum or throughout the year (however the  
17 university allows). This salary should give  
18 you two well-paid and, I believe, similarly  
19 paid assistants in Taylor and Carter.

14 I want to keep this train rolling and,  
15 having met this young man, I believe he has  
16 a lot to offer the Pack. If you need a  
17 promissory agreement prior to an  
18 announcement just respond to this email and  
19 we will work through my attorney. I want my  
20 name 100% out of this. All dealings will be  
21 through my attorney and anonymous in nature.

19 I understand this will not equal AZ State's  
20 direct offer. However, playing in the NCAA  
21 Tournament (Sweet 16 or better if Nick  
22 returns) next year vs dwelling in the cellar  
23 of the Pac 10 will more than make up for  
24 this in long range salary. He will also not  
25 have to bare the cost associated with  
selling one home and buying another.  
Considering these points the financial  
difference is in favor of Nevada.

25 Coach Fox, I am someone who made there (sic)  
voice loud and clear to Ms Groth that we  
wanted you around. I am just doing the same

1 for a young man that I believe is valued at  
2 Nevada. I have heard you speak fondly of  
3 him.

4 For Coach Sendek this is another in a line  
5 of assistants who are backpedaling on that  
6 job. Larry Harris, Greg Moreland, and a  
7 third fellow all backed out after spending  
8 over a month on the job. Coaching contracts  
9 mean nothing if he has signed there. AZ  
10 State is a dead end job and these other  
11 coaches quickly recognized it. I am  
12 interested in helping Coach Taylor and the  
13 Wolf Pack program. Stability is how great  
14 programs are built.

15 Nevada basketball is better for this young  
16 man's career than a PAC 10 doormat. Taylor  
17 can be assured that it is OK to change his  
18 mind. It happens in business and sports  
19 professions all the time. Also, the timing  
20 to get the donor support was difficult with  
21 you being on vacation during this  
22 transaction.

23 Coach Fox, this donation is 100% contingent  
24 on Coach Taylor staying at Nevada through  
25 the 2006-07 basketball season. And, 100% of  
the \$25,000 is to be directed to his salary.  
If he completes the move to AZ State then  
the offer is off the table.

Please email me back at packdonor@yahoo.com  
if there is interest in this offer.

I anxiously await your response.

Pack Donor<sup>22</sup>

In addition to the above email, "Pack Donor" sent several  
other emails regarding the retention of Mr. Taylor. The other

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<sup>22</sup> Exhibit 4, pps. 191-192

1 emails were sent to Mr. Fox and Mr. Taylor. Mr. Taylor also  
2 responded via emails.<sup>23</sup>

3 Officials from the UNR Athletic Department believed that  
4 the "Pack Donor" may have been Petitioner because of her  
5 relationship with Mr. Taylor. An investigation was conducted.  
6 As will be discussed hereinafter, there is testimony in this  
7 proceeding that it is over 99% certain that the "Pack Donor"  
8 emails came from Petitioner's computer. Petitioner denies that  
9 she sent the emails. The UNR Athletic Director suggested that  
10 Petitioner receive counseling.  
11

12 This was not the only issue involving Petitioner and Mr.  
13 Taylor. On June 19, 2006, Mr. Taylor sent an email to Ms. Groth  
14 requesting that Petitioner cease all communication with him.<sup>24</sup>  
15 Ms. Groth contacted the UNR Police Department. On June 21,  
16 2006, Petitioner discussed the Taylor matter with a UNR Police  
17 representative. Petitioner was asked to have no further contact  
18 with Mr. Taylor, and Mr. Taylor was asked via a telephone call  
19 that he should also have no contact with Petitioner.<sup>25</sup>  
20  
21  
22  
23

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24 <sup>23</sup> See Exhibit 4, pps. 189-190, 193, 195, 202. Coach Taylor did not stay at  
25 UNR.

<sup>24</sup> Exhibit 4, p. 230

<sup>25</sup> Exhibit 3, p 108 is an email from Mr. Taylor dated March 7, 2007 "recanting  
all accusations towards Ms. Patraw."

1           The meeting with the UNR Police Department was memorialized  
2 in a June 21, 2006 memo signed by Kevin Youngflesh.<sup>26</sup> The memo  
3 provides as follows:

4           "On June 21, 2006 at about 1600 hours,  
5 Athletic Director Cary Groth came to the  
6 Police Department with Coach Terri Patraw.  
7 AD Groth waited in the break room while  
8 Associate Director Renwick and I spoke with  
9 Coach Patraw in the conference room.

10           I thanked Coach Patraw for coming down to  
11 the Police Department and informed her that  
12 I was not investigating any crime or  
13 criminal activity, but was attempting to  
14 mediate prior to the situation becoming a  
15 criminal matter.

16           I told Coach Patraw that former UNR Coach  
17 Dedrique Taylor did not want any further  
18 contact with her. I advised her that any e-  
19 mail, text message, letter, phone call, or  
20 other contact may be considered stalking or  
21 harassing in nature and lead to criminal  
22 prosecution. Coach Patraw stated she fully  
23 understood and had no intention of  
24 communicating with Coach Taylor.

25           Coach Patraw went on to explain that she was  
not engaged in any type of stalking  
behavior, but that communication between her  
and Coach Taylor was mutual. Coach Patraw  
stated that on May 22, 2006 between 1200 and  
1400 hours, she received a phone call from  
Coach Taylor where he was threatening her.  
Coach Patraw stated that Coach Taylor stated  
several times, "It's all on you", and used a  
tone where she felt he was threatening her  
not to say anything about the "dirt" she had  
on him.

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<sup>26</sup> Exhibit 4, pps. 33-34

1 Coach Patraw explained that she was in a  
2 relationship with Coach Taylor at the same  
3 time he had a girlfriend. She said she did  
4 not know about Coach Taylor's girlfriend at  
5 the time they were dating and believes Coach  
6 Taylor is afraid she will disclose his  
7 infidelities to his girlfriend. Coach  
8 Patraw said she also had knowledge of Coach  
9 Taylor violating NCAA rules and believes he  
10 is also afraid of her disclosing the  
11 violations to the University.

12 I provided Coach Patraw with my business  
13 card and suggested she call me if she had  
14 any contact with Coach Taylor. She  
15 requested that I also ask Coach Taylor to  
16 have no contact with her.

17 At about 1635 hours on June 21, 2006, I  
18 contacted Coach Taylor via telephone. I  
19 advised him that I relayed his request to  
20 Coach Patraw to have no further  
21 communication. He stated that was not a  
22 problem and he assured me that he would not  
23 be communicating with Coach Patraw.

24 On August 28, 2006, Ms. Groth sent the following memo to  
25 Petitioner:

I feel that it is appropriate to notify you,  
in writing how disappointed I am that you  
have disregarded my directive regarding the  
issue involving Dedrique Taylor.

My directive, simply put, was that there was  
to be no further discussion regarding this  
matter nor was this situation to continue to  
disrupt our athletics operation.

Additionally, you and I spoke about the  
possibility that the "anonymous donor"  
email, addressed to me, was generated from  
your computer. While there is not absolute  
proof, the probability is high, that the  
email did come from your computer. You have

1 denied sending the email, however, I am  
2 hopeful that if you did have anything to do  
3 with the email, that you would refrain from  
such inappropriate behavior in the future.

4 Any further discussion regarding this issue  
5 will be considered insubordination and may  
necessitate disciplinary action."<sup>27</sup>

6 Respondent asserts that Petitioner did not put the Dedrique  
7 Taylor matter behind her. Respondent cites a May 22, 2007 email  
8 sent to Cindy Fox, Associate Executive Athletic Director<sup>28</sup> where  
9 the Dedrique Taylor matter was brought up as well. Respondent  
10 also contends that Petitioner had verbal conversations regarding  
11 Mr. Taylor after she was instructed not to discuss the matters  
12 further.

### 13 **Threatened Resignations and Salary Discussions**

14 Respondent alleges that Petitioner threatened to resign  
15 from her position on numerous occasions. Some of the threatened  
16 resignations related to Petitioner's belief that she was not  
17 properly compensated as the Head Women's Soccer Coach.  
18

19 The record indicates that the first threatened resignation  
20 occurred during the controversy involving Dedrique Taylor. On  
21 July 7, 2006, Petitioner sent an email to Ms. Fox providing, in  
22 part, as follows:

---

23  
24  
25 <sup>27</sup> Exhibit 4, p. 38. Petitioner contends that the memo was meant to instruct  
her not to bring up the issue of the alleged NCCA violations committed by Mr.  
Taylor. Respondent denies it had anything to do with alleged NCAA  
violations.

<sup>28</sup> Exhibit 4, p. 69

1 "We cannot keep putting this off. You need  
2 time to hire a new coach. You have a month  
3 to get someone here. This is a great job  
4 with a fantastically talented team. The  
5 schedule is set through 2008 and includes  
6 home games with Big Ten and Pac 10 teams.  
7 We are almost finished with 2007 recruiting  
8 so the future is well taken care of.  
9 Organizationally things could not be in  
10 better shape. And, the team is the nicest  
11 group of people I have ever coached."<sup>29</sup>

12 Beginning in the late spring of 2007, Petitioner again  
13 began to threaten to resign. The threats were based on her  
14 belief that she was not fairly compensated by UNR. According to  
15 the testimony of Ms. Fox, on May 18, 2007 she tried to talk  
16 through things with Petitioner, including her threat to resign.

17 On June 22, 2007, Petitioner sent a text mail to Ms. Fox as  
18 follows:

19 "The gardner contract just made for  
20 wonderful employee morale-the least  
21 successful coach in the dept gets a 5 yr  
22 extension and a raise larger than mine-ur  
23 most successful coach-mind bogging. She  
24 has had one winning season in 5 years! U  
25 will have my resignation Monday am. Sorry  
but I cannot believe the way I have been  
treated here. Why is it that everyone  
respects me and the job I have done but u  
and cary? I hope you will let me tell cary  
myself? Thank you?"<sup>30</sup>

---

29 Exhibit 4, p. 240

30 Exhibit 4, p. 136

1 Associate Athletic Director Keith Hackett prepared a memo  
2 regarding a conversation he had with Petitioner on June 25,  
3 2007. That memo provides, in pertinent part, as follows:

4 "She began by asking me if I had seen the  
5 press release from the Board of Regents  
6 meeting that afternoon regarding the  
7 contract extension of Coach Mark Fox and my  
8 reply was that no I had not. She then  
9 continued to talk in a very angry manner  
10 about a raise and a contract extension that  
11 Women's Softball Coach Michelle Gardner had  
12 just received. Again, my response was that  
13 I had not seen the release and was not aware  
14 of Coach Gardner's contract situation. I  
15 noticed that Coach Patraw had a letter in  
16 her hand and she went on to explain to me  
17 that that she was going to resign in protest  
18 over what she had read in the press release.  
19 She continued to complain about Coach  
20 Gardner and how she had not earned anything  
21 that she was getting and that she (Coach  
22 Patraw) deserved more then she was receiving  
23 for the success of her program. She was  
24 visibly shaken and upset and was ready to  
25 tender her resignation at that moment. Her  
language was profanity laced during the  
entirety of our conversation."<sup>31</sup>

18 Also, on June 25, 2007 Petitioner delivered the following  
19 letter to Ms. Fox:

20 "To Cary Groth and Cindy Fox:

21 Please accept this as my letter of resignation as Head  
22 Soccer Coach at the University of Nevada effective  
23 August 1, 2007 (my last 'working' day). I will  
24 fulfill my camp obligations throughout July as that is  
25 money I have earned. Thank you for the opportunity at

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<sup>31</sup> Exhibit 4, p. 74

1 Nevada. Please advise when I can tell my team and  
2 release an accurate account of why I am leaving."<sup>32</sup>

3 Ms. Fox testified that she talked Petitioner out of  
4 resigning and assisted Petitioner in drafting a letter to Ms.  
5 Groth expressing her concerns with her salary. Petitioner did  
6 send a letter addressed to Ms. Groth on June 25, 2007 addressing  
7 her salary concerns. That letter included the following  
8 language:

9 "Cary, I want you to know that these issues  
10 are so important to me that if we cannot  
11 agree on my value I plan to resign effective  
12 August 1. This is not a threat; rather it  
13 is an honest assessment of where I am at. I  
14 cannot sit back and watch coaches who are  
15 not successfully performing their duties  
16 earn a higher salary than me. I have to  
17 respect the person I see in the mirror  
18 everyday. Thank you for your time. I would  
19 welcome the opportunity to meet with you and  
20 Cindy."<sup>33</sup>

21 In July of 2007, Petitioner sent Ms. Fox an undated lengthy  
22 letter detailing her salary concerns. The letter contained this  
23 paragraph:

24 "Can you honestly look in the mirror and  
25 justify giving Gardner a larger raise (or  
any raise at all) than me this year? Can  
you really both sleep at night knowing that  
you are paying these poor leaders/mentors  
substantially more than me? One  
administrator heard that Shantel made more  
than me and they doubled over laughing. I  
finally had to tell them to stop. I feel

---

<sup>32</sup> Exhibit 4, p. 77

<sup>33</sup> Exhibit 4, p.84

1 for you when the truth about my resignation  
2 becomes public and you have to answer these  
3 questions. But I am not falling on a sword  
4 after I have been so degraded here."<sup>34</sup>

5 On July 30, 2007, Ms. Fox received another letter from  
6 Petitioner. That letter contained the following paragraph:

7 "While it may not matter to you who your  
8 coaches are this is a potentially life-  
9 changing situation for me and it may affect  
10 20 student-athletes. I have expressed my  
11 concerns for 2 years and further emphasized  
12 my frustrations in the spring to no avail.  
13 I am at a crossroads right now... I am not  
14 content with Cary's decision to hold my  
15 current salary or the way I have been  
16 treated. I am also aware she will not be  
17 back for another week. Where do we go from  
18 here? I need to get my ducks in a row,  
19 personally. And, out of respect for the  
20 soccer student-athletes it is only fair to  
21 make sure any potential transition goes as  
22 smoothly as possible."<sup>35</sup>

23 On August 21, 2007, Petitioner had a meeting with Ms. Fox  
24 and Ms. Groth regarding a contract extension. The terms of the  
25 potential extension were as follows:

26 "Term: 2.5 year: January 1, 2008 - June  
27 30, 2010

28 Salary: Base: \$62,000  
29 Annual adjustments: C.O.L.A. and  
30 merit

31 Incentives: Post season (NCAA): up to 50% of  
32 monthly base per round.

33 WAC coach of the year: \$1000

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34 Exhibit 4, p. 88

35 Exhibit 4, p. 99

1 Minimum Performance Standards:

- 2 • Academic  
3 • Competitive  
4 • Behavior  
5 • Community"<sup>36</sup>

6 The negotiations were not successful. On August 22, 2007,  
7 Petitioner sent an email to Ms. Fox stating, "Plan for my  
8 resignation."<sup>37</sup> On August 24, 2007, Petitioner sent a text  
9 message to Ms. Fox as follows:

10 "Just so we r clear I meant my email. We  
11 just need to sort the logistics on Monday.  
12 Thank u for disrespecting me again. U r  
13 kidding if u think I am going to work 4 less  
14 than big sky coaches. Cary has no interest  
15 in winning. I will finish my wknd  
16 obligations? will finish cleaning out my  
17 office by Sunday evening? letter of res and  
18 keys will be on my desk? heading out of  
19 town Tuesday so have kc let me know if she  
20 needs anything from me b4 i leave. I am  
21 sorry but i am done running uphill again the  
22 wind: thk u 4 the opportunit"<sup>38</sup>

23 Ms. Fox testified that she text messaged Petitioner on  
24 August 25, 2007 accepting Petitioner's resignation. However,  
25 UNR employees have three days to rescind the resignation and on  
26 August 26, 2007 Petitioner did send a letter to Ms. Groth  
27 rescinding her resignation.<sup>39</sup>

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28 <sup>36</sup> Exhibit 4, p. 113

29 <sup>37</sup> Exhibit 4, p. 115

<sup>38</sup> Exhibit 4, p. 136

<sup>39</sup> Exhibit 4, p. 116

1           There is testimony that Ms. Groth and Ms. Fox told  
2           Petitioner on numerous occasions that she is not to compare her  
3           salary with coaches in other sports. According to Respondent,  
4           Petitioner continued to make such comparisons despite the  
5           directives not to make such comparisons.

6                           **Petitioner's Termination**

7           Ms. Groth and Petitioner met on August 28, 2007.  
8           Petitioner was given her 60-day notice of termination.  
9           Petitioner asked Ms. Groth if she would consider the timing of  
10          the termination and let Petitioner coach through the competitive  
11          season. Ms. Groth considered the request for several hours and  
12          determined that the 60-day notice of termination would stand.  
13

14          Respondent asserts that the decision to terminate  
15          Petitioner was not because of her reports of improper  
16          governmental action. According to Respondent, the termination  
17          was for several, legitimate business reasons:

18                        "Patraw had a pattern and history of  
19                        inability to adhere to directives. This is  
20                        demonstrated by her annual evaluations, the  
21                        Dedrique Taylor issue, and her refusal to  
22                        stop comparing her salary demands to coaches  
23                        in other sports, among others. Patraw's  
24                        threats of resignation, continual  
25                        dissatisfaction with her job and  
                      compensation, and her challenges to  
                      administrative decisions resulted in a loss  
                      of trust in her and the conclusion that she  
                      would not be able to work within the  
                      Athletic Department in the future. As a  
                      result, it was decided to accept her  
                      resignation text to Cindy Fox on August 24,

1           2007 and when Patraw decided to withdraw  
2           resignation on August 26, Groth decided to  
3           terminate Patraw under the 60 day notice  
4           provision in her contract."<sup>40</sup>

5           **THE WITNESSES**

6           After opening arguments, Petitioner called Dr. Janet  
7           Vreeland as the first witness. Ms. Vreeland was the Interim  
8           Provost for UNR in August of 2007. She testified that in late  
9           August of 2007 the Athletics Department asked for assistance  
10          regarding the employment of Petitioner. She indicated that the  
11          Athletics Department told her that Petitioner was constantly  
12          complaining about her salary and threatened to resign on  
13          numerous occasions. She was told that the Athletics Department  
14          wanted to exercise the 60-day notice provision in Petitioner's  
15          employment contract. She told representatives of the Athletics  
16          Department that it would be fine if the notice provision was  
17          exercised. She told Ms. Groth and Ms. Fox that they should talk  
18          to Gena Jones, Assistant Vice President of Human Resources.

19          The next witness called by Petitioner was Gena Jones,  
20          Assistant Vice President of Human Resources for Respondent. Ms.  
21          Jones stated that she was contacted by Ms. Groth on August 27,  
22          2007. She was told that over the previous weekend Petitioner  
23          threatened to resign several times. Ms. Jones explained that  
24          

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25          <sup>40</sup> Respondent's Pre-Trial Statement, p. 9

1 UNR policy allows an individual to rescind a resignation within  
2 three days. She indicated that Petitioner had, in fact,  
3 rescinded her resignation.

4 Ms. Jones testified that Ms. Groth indicated that she  
5 wanted to terminate Petitioner because of the threatened  
6 resignations. Ms. Jones also stated that Ms. Groth told her  
7 that Petitioner had reported NCAA violations.

8 Ms. Jones attended the meeting on August 28, 2007 whereby  
9 Petitioner was told that the 60-day notice provision in her  
10 contract was being exercised.<sup>41</sup> Ms. Jones indicated that  
11 Petitioner stated at that meeting that she should be protected  
12 as a "Whistle blower".

13  
14 The next witness called by Petitioner was Dr. Jean Perry,  
15 Special Assistant to President of UNR, Athletics, Academics and  
16 Compliance. She testified that during 2006-2007 there were 19  
17 reported violations of NCAA rules and 24 or 25 investigations of  
18 potential NCAA violations. She testified that the violations  
19 involving the Men's Golf Coach were handled in a normal fashion.

20 The next witness called by Petitioner was Sandra  
21 Niedergall, Director of Compliance, NCAA Rules and Regulations.  
22 She testified that she became aware of the allegations regarding  
23 the Men's Golf Coach on June 25, 2007. She testified that Cindy  
24

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25 <sup>41</sup> Exhibit 4, p. 120 is the notes of the meeting prepared by Ms. Jones.

1 Fox informed her of the allegations. She testified that a  
2 normal investigation of alleged NCAA violations was conducted.

3 The next witness called by Petitioner was Keith Hackett,  
4 Associate Athletic Director, Facilities and Operations. He  
5 discussed a memo he prepared on September 23, 2007<sup>42</sup> after  
6 Petitioner was terminated. Mr. Hackett testified that on June  
7 25, 2007 he went to the Wolf Pack Ticket Office. He saw  
8 Petitioner. Petitioner was visibly upset. She complained that  
9 the Women's Softball Coach had just received a raise and that  
10 Petitioner felt that she deserved more money than the Women's  
11 Softball Coach. Mr. Hackett did not recall telling Petitioner  
12 that the Women's Track Coach makes more than she does because  
13 she is African-American.  
14

15 The next witness called by Petitioner was Antoinette  
16 Majinovich, at the time of her testimony, Acting Women's Soccer  
17 Coach. Ms. Majinovich testified that she did not know the  
18 reason Petitioner was terminated. She testified that she never  
19 spoke to Petitioner about Petitioner's desire to resign.  
20

21 The next witness was Graeme Abel, Assistant Women's Soccer  
22 Coach. He testified that he did not know anything about  
23 Petitioner's termination. He was aware of the alleged  
24 violations of Title IX.  
25

---

<sup>42</sup> Exhibit 4, p. 74

1 The next witness called by Petitioner was Cary Groth, UNR  
2 Athletic Director. She testified that she did not hire  
3 Petitioner. She indicated that Petitioner's performance on the  
4 field was good. She testified that Cindy Fox made her aware of  
5 the alleged NCAA violations. She was not aware of any Title IX  
6 violations although she was aware of some issues regarding the  
7 use of facilities. She was aware of the comments made by Mark  
8 Fox but indicated that they were never reported as sexual  
9 harassment. She indicated that Petitioner should have coffee  
10 with Mr. Fox, but Mr. Fox declined the offer.  
11

12 She testified that after the investigation of the alleged  
13 violations of NCAA rules by the Men's Golf Coach, he was  
14 suspended for three matches.<sup>43</sup>

15 Ms. Groth testified that she decided to terminate  
16 Petitioner because of (1) her failure to follow directives; (2)  
17 the lack of trust and confidence in her; and (3) the numerous  
18 threats to resign.

19 Ms. Groth described the anonymous emails regarding former  
20 Assistant Basketball Coach Dedrique Taylor, Petitioner's  
21 constant complaints that she was paid less than certain coaches  
22 in other sports, and her constant threats of resignation. She  
23 described the series of meetings in late August of 2007, which  
24

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25 <sup>43</sup> She testified that she recommended a two match suspension but the President of UNR decided that a three match suspension was appropriate.

1 culminated in the exercise of the 60-day notice provision in  
2 Petitioner's contract.

3         The next witness called by Petitioner was Cindy Fox,  
4 Executive Assistant Athletic Director. Ms. Fox testified that  
5 she was Petitioner's supervisor as well as her mentor. She  
6 testified that she counseled Petitioner on numerous occasions  
7 that she should not compare her salary with coaches in different  
8 sports but that Petitioner continued to do so.

9         Ms. Fox also testified regarding the numerous times  
10 Petitioner threatened to resign. She also discussed the May 2005  
11 wine tasting event where Mark Fox, the husband of Ms. Fox, told  
12 Petitioner and another female coach "you two look like you are  
13 on a date." Ms. Fox does not recall if she ever discussed that  
14 comment with Petitioner.

15         Ms. Fox also described how she responded to the alleged  
16 violations of Title IX. She investigated the allegations and  
17 made sure that the Women's teams had appropriate access to the  
18 fields and Women's locker room.

19         The next witness was Jody Dansie, previously the Women's  
20 Golf Coach and currently Admissions and Records Coordinator.  
21 Ms. Dansie testified that she told Petitioner about the NCAA  
22 violations involving the Men's Golf Coach. She did not report  
23 the allegations but was aware that Petitioner did report them.  
24  
25

1           The next witness was the Petitioner. Petitioner testified  
2 that she was hired by Chris Ault, the former Athletic Director  
3 at \$45,000 per year. She believed she was an excellent coach.  
4 She built a successful program. Prior to her employment, UNR  
5 never had a winning Women's soccer record. She testified that  
6 she previously coached at Arizona State University.

7           Petitioner testified that she was offered a new contract by  
8 Ms. Groth with a \$10,000 increase in salary. She believed this  
9 was not indicative of a coach with behavior issues.  
10

11           Petitioner testified that when Ms. Groth indicated that she  
12 intended to exercise the 60-day notice provision in Petitioner's  
13 employment contract, she asked that the matter be tabled until  
14 after the season. Ms. Groth thought about waiting until the end  
15 of the season but decided not to wait and terminated her.

16           Petitioner testified at length concerning what she believed  
17 to be unfair treatment relating to her contract. She strongly  
18 believed that she was underpaid when compared with other Women's  
19 Soccer coaches and less successful coaches in other sports.

20           Petitioner also discussed the comments of Mark Fox at the  
21 May 2005 wine tasting, the reporting of the alleged NCAA  
22 violations, and the reporting of the alleged Title IX  
23 violations.

24           With respect to the comments of Mr. Fox, Petitioner  
25 believed that they were harassing and showed a lack of respect

1 toward women coaches at UNR. Petitioner said the comments  
2 included the word "lesbians".

3 Petitioner testified that Jody Dansie told her about the  
4 violations committed by the Men's Golf. She believed it was her  
5 responsibility to report any NCAA violations that she had  
6 knowledge of.

7 She testified that the women athletes at UNR always had  
8 issues with the use of the facilities. She testified that she  
9 has fought with the Athletic Department on this issue for many  
10 years.

11 Respondent called, Steven Zink, Vice President of  
12 Information Technology for UNR, to testify concerning the  
13 anonymous "Pack Donor" emails. He testified that he was asked  
14 to investigate the emails. He explained how he conducted the  
15 investigation. He concluded that there is a 99% certainty that  
16 the emails came from Petitioner's computer.

17 Sandra Niedergall was called back as a witness to explain  
18 that the investigation of the NCAA violations was done in the  
19 normal course of business.

20 Respondent than called Devin Scruggs, Women's Volleyball  
21 Coach. Ms. Scruggs described the comment by Mark Fox at the  
22 2005 wine tasting. Ms. Scruggs was with Petitioner when Mr. Fox  
23 said, "you two look like you are on a date." She briefly  
24 discussed the comment with Petitioner but has not discussed the  
25

1 comment since that time. She did not believe the comment to be  
2 sexual harassment. She did not recall the use of the word  
3 "lesbians".

4 Ms. Fox then was called back to the stand. She testified  
5 that she never told Petitioner not to make the report of the  
6 NCAA violations. In fact, she testified that it was  
7 Petitioner's job to report any NCAA violations. She also  
8 testified that she told Petitioner on numerous occasions only to  
9 compare her salary with other similarly situated Women's soccer  
10 coaches.  
11

12 Ms. Groth was called back as a witness. She testified  
13 concerning an allegation by Petitioner that Dedrique Taylor  
14 committed NCAA violations while a coach at UNR. She testified  
15 that no one at UNR is aware of what those violations may be and  
16 that Mr. Taylor has no knowledge as to what those violations may  
17 be. Ms. Groth reiterated that she did not believe that  
18 Petitioner ever reported a sexual harassment claim against Mark  
19 Fox. Ms. Groth stated that she believed that Petitioner felt  
20 that Ms. Fox did not like her, not that he committed any acts of  
21 sexual harassment.  
22

23 Thereafter, the parties presented closing arguments and the  
24 matter was submitted for decision.  
25

1 CONCLUSIONS OF LAW

2 Petitioner's Whistle Blower Complaint was timely filed and  
3 the determination of the merits of the Whistle Blower Complaint  
4 is properly within the jurisdiction of the undersigned  
5 administrative hearing officer.

6 NRS 281.611 to NRS 281.671 addresses disclosure of improper  
7 governmental action and provides for the initiation of Whistle  
8 Blower Complaints. NRS 281.611 provides as follows:  
9

- 10 1) "Improper governmental action" means  
11 any action taken by a state officer or  
12 employee or local governmental officer  
13 or employee in the performance of his  
14 official duties, whether or not the  
15 action is within the scope of his  
16 employment, which is:  
17 a) In violation of any state law or  
18 regulation;  
19 b) If the officer or employee is a  
20 local governmental officer or  
21 employee, in violation of an  
22 ordinance of the local government;  
23 c) An abuse of authority;  
24 d) Of substantial and specific danger  
25 to the public health or safety; or  
e) A gross waste of public money.
- 2) "Local government" means a county in  
this State, an incorporated city in  
this State and Carson City.
- 3) "Local governmental employee" means any  
person who performs public duties under  
the direction and control of a local  
governmental officer for compensation  
paid by or through a local government.
- 4) "Local governmental officer" means a  
person elected or appointed to a  
position with a local government power,  
trust or duty, including:  
a) Actions taken in an official  
capacity, which involves a

1 substantial and material exercise  
2 of administrative discretion in  
3 the formulation of local  
4 governmental policy;

5 b) The expenditure of money of a  
6 local government; and

7 c) The enforcement of laws and  
8 regulations of the State or a  
9 local government.

10 5) "Reprisal or retaliatory" action  
11 includes:

12 a) The denial of adequate personnel  
13 to perform duties;

14 b) Frequent replacement of members of  
15 the staff;

16 c) Frequent and undesirable changes  
17 in the location of an office;

18 d) The refusal to assign meaningful  
19 work;

20 e) The issuance of letters of  
21 reprimand or evaluations of poor  
22 performance;

23 f) A demotion;

24 g) A reduction in pay;

25 h) The denial of a promotion;

i) A suspension;

j) A dismissal;

k) A transfer;

l) Frequent changes in working hours  
or workdays;

m) If the employee is licensed or  
certified by an occupational  
licensing board, the filing with  
that board, by or on behalf of the  
employer, a complaint concerning  
the employee, if such action is  
taken, in whole or in part,  
because the state office or  
employee or local governmental  
officer or employee disclosed  
information concerning improper  
governmental action.

6) "State employee" means any person  
performs public duties under the  
direction and control of a state  
officer for compensation paid by or  
through the State.

- 1                   7) "State officer" means any person  
2                    elected or appointed to a position  
3                    with the State which involves the  
4                    exercise of a state power, trust or  
5                    duty, including:  
6                    (a) Actions taken in an official  
7                    capacity which involve a  
8                    substantial and material  
9                    exercise of administrative  
10                   discretion in the formulation of  
11                   a state policy;  
12                   (b) The expenditure of state money;  
13                   and;  
14                   (c) The enforcement of laws and  
15                   regulations of the State.

16                   Pursuant to NAC 281.315(4) the procedures for the hearing  
17                   on the Whistle Blower Complaint are as follows:

- 18                   a) The opening statement for the state  
19                   officer or employee.  
20                   b) The opening statement for the employer,  
21                   unless reserved.  
22                   c) Presentation of the state officer's or  
23                   employee's case, followed by cross-  
24                   examination. The state officer or  
25                   employee must establish that:  
26                    1. He was a state officer or employee  
27                    on the date of the alleged  
28                    reprisal or retaliatory action;  
29                    2. He disclosed information  
30                    concerning improper governmental  
31                    action; and  
32                    3. The alleged reprisal or  
33                    retaliatory action was taken  
34                    against him within 2 years after  
35                    the date he disclosed the  
36                    information concerning improper  
37                    governmental action.  
38                   d) If the state officer or employee  
39                   establishes the facts set forth in  
40                   paragraph (c), presentation of the  
41                   employer's case, followed by cross-  
42                   examination, to establish that the  
43                   employer did not engage in the  
44                   alleged reprisal or retaliatory

1 action of that the action was taken  
2 for a legitimate business purpose  
3 and was not the result of the  
4 disclosure of information concerning  
5 improper governmental action by the  
6 state officer or employee.

- 7 e) If the employer establishes a  
8 legitimate business purpose for the  
9 alleged reprisal or retaliatory  
10 action, the state officer or  
11 employee may introduce evidence,  
12 followed by cross-examination, to  
13 demonstrate that the stated business  
14 purpose is a pretext for the  
15 reprisal or retaliatory action.
- 16 f) The parties may respectively offer  
17 rebutting testimony only, unless the  
18 hearing officer permits additional  
19 evidence upon the direct cause.
- 20 g) The argument for the state officer  
21 or employee.
- 22 h) The argument for the employer.
- 23 i) The closing argument for the state  
24 officer or employee.
- 25 j) Submission of the appeal for  
decision.

16 In *Simonian v. University and Community College System of*  
17 *Nevada*, 122 Nev. 187, 128 P.3d 1057 (2006) the Nevada Supreme  
18 Court held as follows:

19 The hearing officer must determine whether  
20 "the action taken was a reprisal or  
21 retaliatory action, [and] may issue an order  
22 directing the proper person to desist and  
23 refrain from engaging in such action."  
24 [Citing and quoting NRS 281.641(2)]

25 Nowhere in NRS Chapter 281 does it  
specifically authorize hearing officers to  
independently determine whether the  
government has actually undertaken "improper  
governmental action" or to remedy such  
conduct.

1 Thus, with respect to an NRS 281.641(1)  
2 reprisal/retaliatory claim, the hearing  
3 officer must only determine whether a state  
4 employee has engaged in protected activity,  
5 i.e., had disclosed information concerning  
6 alleged conduct that might constitute  
7 "improper governmental action." As a  
8 result, the hearing officer's determination  
9 regarding whether Simonian's allegations  
10 proved correct was unauthorized. ID. At  
11 1064.

12 Thus pursuant to NRS 284.611, NAC 281.315(4) and *Simonian*,  
13 *supra*, Petitioner must demonstrate that she was engaged in  
14 protected activity, that she was subsequently discharged from  
15 employment, and that there was a causal connection between her  
16 activity and the discharge. If it is determined that Petitioner  
17 met this burden, the Respondent must then demonstrate that there  
18 was a legitimate, non-retaliatory reason for the discharge. If  
19 Respondent is able to introduce such evidence, the burden shifts  
20 to the Petitioner to demonstrate that the legitimate reason was  
21 a mere pretext for the reprisal or retaliatory action. The  
22 overall burden, however, rests with the Petitioner to show that  
23 but for the disclosure of improper action, she would not have  
24 been discharged. Further, in accordance with *Simonian, supra*,  
25 the hearing officer is not authorized to make a determination as  
to whether the allegations concerning "improper governmental  
action" were correct. Rather, the hearing officer only need  
determine whether the Petitioner has engaged in protective

1 activity, that is, that she has disclosed information that **might**  
2 constitute "improper governmental action."

3 For Petitioner to prevail, she must, therefore show, by  
4 substantial evidence, that she (1) disclosed information that  
5 might constitute "improper governmental action, as defined in  
6 NRS 281.611 and (2) that she suffered a reprisal or retaliatory  
7 action, as defined in NRS 284.611(5) because of her disclosure  
8 of improper governmental action.

9  
10 Substantial evidence has been defined as that evidence  
11 which a reasonable mind might accept as adequate to support a  
12 conclusion. Richardson v. Perales, 402 U.S. 389 (1971); State  
13 Emp. Security v. Hilton Hotels, 106 Nev. 606, 792 P.2d 497,  
14 (1986).

15 Evidence sufficient to support an administrative decision  
16 is not equated with the preponderance of the evidence, as there  
17 may be cases wherein two conflicting views may each be supported  
18 by substantial evidence. Robinson Transp. Co. v. P.S.C., 159  
19 N.W. 2d 636 (Wisc. 1968).

20 In this proceeding, Petitioner alleges that the alleged  
21 "improper governmental action" that she disclosed was (1) sexual  
22 harassment by the UNR Men's Basketball Coach; (2) violations of  
23 Title IX and (3) NCAA violations by the Men's Golf coach.  
24 Petitioner further alleges that she was terminated because of  
25 the disclosure of the alleged "improper governmental action."

1 Thus, it is the responsibility of the undersigned  
2 administrative hearing officer to determine whether there were  
3 disclosures of improper governmental action and whether there is  
4 a causal connection between her termination and her disclosures  
5 of improper governmental action.

6 **DISCLOSURES OF IMPROPER GOVERNMENTAL ACTION**

7 **Sexual Harassment**

8 The substantial, reliable and probative evidence  
9 establishes that in June of 2005 Men's Head Basketball Coach  
10 Mark Fox saw Petitioner and the UNR Women's Volleyball Coach (a  
11 female) at a wine tasting event.  
12

13 The substantial, reliable and probative evidence  
14 establishes that at the 2005 wine tasting event Mark Fox told  
15 Petitioner and the Volleyball Coach words to the effect "you two  
16 look like you are on a date."

17 The substantial, reliable and probative evidence  
18 establishes that in June of 2006, Athletic Director Cary Groth  
19 became aware that Petitioner believed that Mark Fox had made an  
20 inappropriate comment and that he did not like Petitioner.

21 The substantial, reliable and probative evidence  
22 establishes that Ms. Groth suggested that Mr. Fox and Petitioner  
23 meet for coffee to discuss Petitioner's concerns.  
24  
25

1           The substantial, reliable and probative evidence  
2 establishes that Mr. Fox declined to have coffee with  
3 Petitioner.

4           The substantial, reliable and probative evidence  
5 establishes that the filing of a report with the proper  
6 university authorities of sexual harassment would constitute the  
7 disclosure of "improper governmental action" for purposes of NRS  
8 281.611(1) (c), abuse of authority.

9           In this proceeding, however there is no evidence that  
10 Petitioner ever filed a report of sexual harassment, or a sexual  
11 harassment complaint. The mere statement to Ms. Groth that Mr.  
12 Fox made an inappropriate comment to her and the Women's  
13 Volleyball Coach is not, in and of itself, a "disclosure of  
14 improper governmental action".

15           NAC 281.315(4) (c) requires that the Petitioner establish  
16 that she disclosed information concerning improper governmental  
17 action. Since the evidence does not establish that Petitioner  
18 filed a report or complaint of sexual harassment, Petitioner's  
19 allegation regarding reprisal or retaliation for disclosing  
20 sexual harassment should be, and is hereby, dismissed.

21  
22           **Title XI Violations**

23           The substantial, reliable and probative evidence  
24 establishes that Petitioner reported issues with the use of the  
25 Women's locker.

1           The substantial, reliable and probative evidence further  
2 establishes that Petitioner reported issues with the use of  
3 facilities for Women's Soccer practice.

4           The substantial, reliable and probative evidence further  
5 establishes that the UNR Athletic Department investigated the  
6 issues reported by Petitioner and attempted to rectify the  
7 problems associated with the use of the locker room and practice  
8 field.

9           It is unclear whether these alleged violations constitute  
10 "Title IX" violations. Pursuant to *Simonian, supra*, however,  
11 Petitioner need only disclose conduct that "might constitute"  
12 improper governmental action. Under this standard, the  
13 substantial, reliable and probative evidence establishes that  
14 Petitioner's written complaint filed on August 7, 2007<sup>44</sup>  
15 regarding the use of the Women's locker room and a variety of  
16 emails concerning the use of the Women's locker room and the use  
17 of practice facilities constitute the disclosure of information  
18 that "might" be considered improper governmental action for  
19 purposes of NRS 281.611(1) (c), abuse of authority.  
20

21           Thus, the reporting of the issues regarding the use of the  
22 locker room and practice field satisfy the first requirement of  
23 the Whistle Blower Law, i.e., that the state employee "disclosed  
24

---

25 <sup>44</sup> Exhibit 4, p. 106

1 information concerning improper governmental action". (NAC  
2 281.315(4) (c) (2).

3 **NCAA Violations**

4 The substantial, reliable and probative evidence  
5 establishes that on or about June 25, 2007, Petitioner reported  
6 alleged violations of the NCAA rules and regulations by the  
7 Men's Golf Coach.

8 The substantial, reliable and probative evidence  
9 establishes that UNR officials appropriately investigated the  
10 allegations and found that the Men's golf Coach did violate  
11 certain rules and regulations of the NCAA.

12 The substantial, reliable and probative evidence  
13 establishes that the Men's Golf Coach was suspended by UNR for  
14 three matches for NCAA violations.<sup>45</sup>

15 The substantial, reliable and probative evidence  
16 establishes that pursuant to *Simonian, supra*, the reporting of  
17 alleged NCAA violations "might" be considered the disclosure of  
18 improper governmental action for purposes of NRS 281.611 (1)  
19 (c), abuse of authority.

20 Thus, the reporting of the alleged NCAA violations by  
21 Petitioner satisfies the first requirement of the Whistle Blower  
22 Law, i.e., that the state employee "disclosed information  
23  
24

---

25 <sup>45</sup> There is testimony that the NCAA is now investigating the actions of the Men's Golf Coach.

1 concerning improper governmental action." (NAC 281.315(4) (c)  
2 (2).

3 **REPRISALS OR RETALIATORY ACTIONS**

4 The substantial, reliable and probative evidence  
5 establishes in the summer of 2007 she disclosed information  
6 regarding activities that "might" be considered improper  
7 governmental information for purposes of NRS 281.611(1) (c).

8 The substantial, reliable and probative evidence  
9 establishes that on or about August 28, 2007 Respondent  
10 exercised the 60-day notice provision in Petitioner's employment  
11 contract.  
12

13 NRS 281.611(5) (j) provides that a dismissal from state  
14 service would be considered a prohibited retaliation or reprisal  
15 for disclosure of improper governmental action.

16 Thus, the undersigned administrative hearing officer must  
17 determine whether Petitioner was terminated for disclosure of  
18 improper governmental action or if there was a legitimate, non-  
19 retaliatory reason for Petitioner's dismissal.

20 Respondent contends that Petitioner was terminated for (1)  
21 Petitioner's failure to follow directives; (2) the lack of trust  
22 and confidence in Petitioner; and (3) Petitioner's numerous  
23 threats to resign.  
24  
25

1           **Failure to Follow Directives**

2           The substantial, reliable and probative evidence  
3 establishes that Petitioner was told on numerous occasions not  
4 to compare her salary with coaches in other sports.

5           The substantial, reliable and probative evidence  
6 establishes that Petitioner continued to compare her salary with  
7 other coaches after being told not to.

8           The substantial, reliable and probative evidence  
9 establishes that Petitioner was instructed not to discuss or  
10 bring up the issues regarding former UNR Assistant Basketball  
11 Coach Dedrique Taylor.  
12

13           The substantial, reliable and probative evidence  
14 establishes that Petitioner continued to bring up the issues  
15 regarding Dedrique Taylor.

16           The substantial, reliable and probative evidence,  
17 therefore, establishes that Petitioner did have a history of  
18 failing to follow directives.

19           **Lack of Trust and Confidence**

20           The substantial, reliable and probative evidence  
21 establishes that Petitioner had a relationship with Dedrique  
22 Taylor and did not want Mr. Taylor to leave UNR for Arizona  
23 State University.  
24

25           The substantial, reliable and probative evidence  
establishes that there is a 99% probability that Petitioner sent

1 several anonymous emails signed "Pack Donor" offering to pay Mr.  
2 Taylor \$25,000 if he stayed at UNR.

3       The substantial, reliable and probative evidence  
4 establishes that the sending of these anonymous emails was  
5 highly improper and in the opinion of the undersigned  
6 administrative hearing officer could have been grounds for  
7 termination at the time it was determined that there was a 99%  
8 probability that Petitioner sent the emails.

9       The substantial, reliable and probative evidence further  
10 establishes that Petitioner continually expressed  
11 dissatisfaction with her job to many individuals within the  
12 Athletics Department.

13       The substantial, reliable and probative evidence also  
14 establishes that Petitioner continually complained that other,  
15 "less successful coaches", received higher salaries than she  
16 did.

17       The substantial, reliable and probative evidence  
18 establishes that Respondent was justified in losing confidence  
19 in Petitioner after it became clear that she sent the emails,  
20 continually complained about her salary and complained about the  
21 salaries of other coaches.

#### 22       **Threats to Resign**

23       The substantial, reliable and probative evidence  
24 establishes that on May 22, 2007 Petitioner sent an email to  
25

1 Associate Athletic Director Cindy Fox indicating that she would  
2 be prepared to resign in the fall.

3       The substantial, reliable and probative evidence  
4 establishes that Petitioner sent a text message to Cindy Fox on  
5 June 22, 2007 wherein she threatened to resign.

6       The substantial, reliable and probative evidence  
7 establishes that on June 25, 2007 Petitioner told Associate  
8 Athletic Director Keith Hackett that she was going to resign.

9       The substantial, reliable and probative evidence  
10 establishes that on June 25, 2007 Petitioner gave Associate  
11 Athletic Director Cindy Fox a letter of resignation, which was  
12 later rescinded.

13       The substantial, reliable and probative evidence  
14 establishes that on July 30, 2007 Ms. Fox received a letter from  
15 Petitioner indicating that she was preparing to resign.

16       The substantial, reliable and probative evidence  
17 establishes that at a meeting on August 21, 2007 Petitioner  
18 alluded to her potential resignation.

19       The substantial, reliable and probative evidence  
20 establishes that in August of 2007 Petitioner and Ms. Fox  
21 exchanged a series of emails wherein Petitioner indicated that  
22 Ms. Fox should "plan for her resignation."  
23  
24  
25

1           The substantial reliable and probative evidence establishes  
2 that on August 24, 2007 Petitioner text messaged her resignation  
3 to Ms. Fox.

4           The substantial, reliable and probative evidence  
5 establishes that on August 25, 2007 Ms. Fox accepted the  
6 resignation of Petitioner.

7           The substantial, reliable and probative evidence  
8 establishes that Petitioner rescinded her resignation on August  
9 26, 2007.

10           The substantial, reliable and probative evidence  
11 establishes that UNR policy allows an employee to rescind a  
12 resignation within three days of the resignation.

13           The substantial, reliable and probative evidence  
14 establishes that Athletic Director Cary Groth gave Petitioner  
15 her 60-day notice of termination on August 28, 2007.

16           Petitioner asserts that the numerous threats to resign were  
17 merely a negotiating tactic to obtain a new contract with a  
18 higher salary. It is the opinion of the undersigned  
19 administrative hearing officer however, that the number of  
20 threats to resign and the constant complaints about her salary  
21 were more than a mere "negotiating tactic". These threats and  
22 complaints were an indication that Petitioner was extremely  
23 unhappy as the Head Women's Soccer Coach at UNR. Furthermore,  
24 these threats, complaints and other indications of Petitioner's  
25

1 unhappiness began to have a severe negative impact on the UNR  
2 Athletics Department.

3 Thus, it is the opinion of the undersigned administrative  
4 hearing officer that Petitioner had failed to properly follow  
5 directions from her supervisors when told not to compare her  
6 salary with coaches in other sports<sup>46</sup> and to drop the "Dedrique  
7 Taylor" matter.

8 Additionally, it is the opinion of the undersigned  
9 administrative hearing officer that the UNR Athletic Department  
10 had valid reasons to lose trust in Petitioner when it became  
11 apparent that Petitioner sent the anonymous emails and when she  
12 continually complained about her salary.

13 Lastly, it is the opinion of the undersigned administrative  
14 hearing officer that the constant threats to resign began to  
15 have a significant negative impact on the UNR Athletics  
16 Department.

17 Given the totality of circumstances it cannot be said that  
18 Respondent's assertion that Petitioner was terminated for (1)  
19 failure to follow directions, (2) loss of trust and (3) constant  
20 threats to resign were a pretext for her termination for  
21 disclosing improper governmental action.  
22  
23

---

24  
25 <sup>46</sup> In fact, a significant part of the administrative hearing involved  
Petitioner's continued assertions that she was being treated unfairly because  
coaches in other sports were paid more money than she was and were not nearly  
as successful.

1           Rather, it appears to the undersigned administrative  
2 hearing officer, based on a review of the extensive written  
3 record and the demeanor of the numerous witnesses, that  
4 Petitioner was terminated because of the reasons discussed by  
5 Ms. Groth; that is, that Petitioner consistently failed to  
6 follow the directions of her supervisors, Ms. Fox and Ms. Groth,  
7 that Ms. Groth lost confidence in Petitioner after the anonymous  
8 emails were sent, and that Petitioner's constant threats of  
9 resignation and complaints about her salary had a negative  
10 impact on the Athletics Department.  
11

12           Furthermore, UNR promptly investigated the alleged  
13 violations of NCCA rules by the Men's Golf Coach. The evidence  
14 clearly shows that UNR investigates numerous allegations of NCCA  
15 violations over the course of a year. Thus it does not seem  
16 reasonable to conclude that Petitioner would suffer any reprisal  
17 or retaliatory actions for disclosing NCAA violations.  
18 Additionally, Ms. Fox quickly addressed the issue of alleged  
19 Title IX violations when brought to her attention and thus, once  
20 again it does not seem reasonable to conclude that Petitioner  
21 would suffer reprisals or retaliation for disclosing alleged  
22 violations of Title IX.  
23

24           Petitioner correctly points out that it is highly unusual  
25 to terminate a coach (particularly a coach with a successful  
won-loss record) just prior to the beginning of the season.

1 While this may be highly unusual, it is not the job of the  
2 administrative hearing officer to manage the affairs of the UNR  
3 Athletics Department. Rather, it is the responsibility of the  
4 undersigned administrative hearing officer to determine whether  
5 Petitioner was terminated for disclosing improper governmental  
6 actions. In this case, the evidence supports the conclusion  
7 that Petitioner was terminated for the reasons described by  
8 Respondent and thus, the undersigned administrative hearing  
9 officer finds that the Whistle Blower Complaint should be  
10 dismissed.  
11

12  
13 **DECISION**

14 Based on the foregoing,

15 It is hereby ordered, adjudged and decreed that Petitioner  
16 failed to show by substantial, reliable and probative evidence  
17 that she was terminated from state service for disclosing  
18 improper governmental action; and

19 That the Whistle Blower Complaint on file herein is hereby  
20 **Dismissed.**

21  
22 DATED: March 6, 2008  
23

24 \_\_\_\_\_  
25 **Bill Kockenmeister**  
**Administrative Hearing Officer**

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) I hereby certify that I have, on the  
5<sup>th</sup> day of March 2008, mailed the foregoing document to"

Ashley O'Neill  
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209 E. Musser St.  
Carson City, Nevada 89701  
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\_\_\_\_\_  
Bill Kockenmeister