

**REPORT OF SPECIAL COUNSEL
CONCERNING INVESTIGATION
OF CLAIMS ASSERTED, AND EVIDENCE
PRESENTED, BY COUNSEL FOR E.M.
ON MONDAY, NOVEMBER 26, 2012**

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APPENDIX 1

EXECUTIVE SUMMARY

On July 11, 2012, attorney Barry A. Kozyra, Esq., acting on behalf of Eric Murdock (hereinafter “EM”), sent a letter to Rutgers University, The State University of New Jersey (hereinafter “Rutgers”). In that letter, which was addressed to Rutgers Interim President Richard L. Edwards and Rutgers Athletic Director Timothy Perneti (hereinafter “AD Perneti”), Mr. Kozyra claimed that EM had been wrongfully terminated from his position as Director of Player Development for the men’s basketball program at Rutgers in retaliation for EM’s “inquiries and discussions with others” regarding alleged misconduct by Michael Rice, the Head Coach of the Rutgers men’s basketball team (“Coach Rice”). Thereafter, Mr. Kozyra and outside counsel for Rutgers exchanged additional communications, which culminated in AD Perneti and Janine Purcaro, the Rutgers Chief Financial Officer and Human Resources Director for Rutgers’ athletics program, as well as Rutgers’ outside counsel, meeting with EM and his counsel on November 26, 2012. During that November 26th meeting, EM’s counsel provided AD Perneti with a digital video disc (“DVD”) containing numerous undated video clips depicting short segments of various practices and workouts of the Rutgers men’s basketball team that took place on unspecified dates from in or about September 2010 through in or about February 2012. Many of these clips were out of context. These clips purported to show Coach Rice engaging in various forms of misconduct, including (1) kicking or throwing a basketball at a player; (2) making improper physical contact with players during practice; and (3) using coarse and inappropriate language toward players and coaches of the Rutgers men’s basketball team.

On November 27, 2012, one day after receiving the DVD provided by EM’s attorney, Rutgers requested, and then hosted, a meeting with the undersigned. The Rutgers

representatives included Rutgers' Interim General Counsel, John Wolf, Esq., and AD Perneti. That same day, Rutgers retained my law firm, Connell Foley LLP ("Connell Foley"), to conduct an investigation into the claims made by attorney Kozyra.

Connell Foley was charged with investigating the allegations made by attorney Kozyra and making factual determinations in the following areas:

1. Allegations regarding Coach Rice's conduct as head coach of the Rutgers men's basketball team and a "hostile" work environment;
2. Allegations regarding Coach Rice's conduct and Rutgers' policies relating to bullying, harassment or assault;
3. Allegations regarding Coach Rice's violation of NCAA Rules; and
4. Coach Rice's conduct and Rutgers' Conscientious Employee Protection Policy.

Connell Foley commenced its investigation on November 27, 2012. The investigation included numerous reviews and analyses of each video clip in the DVD provided by attorney Kozyra, reviews of many of the same clips in context, more than 25 interviews of coaches, players and others associated with the Rutgers men's basketball program or the Rutgers athletic department, an interview of EM, the review of dozens of documents relating to the persons and subject matters in issue, the review of more than 50 videos of practices and workouts of the Rutgers men's basketball team,¹ an audio recording containing statements made by EM in late June 2012, a series of text messages exchanged

¹ These videos included the complete videos of more than 50 Rutgers' men's basketball practices held between September 2010 and February 2012. This time period was chosen because it covered a significant sample of the practices and workouts that were held by Coach Rice during his entire tenure as Coach of Rutgers men's basketball program up to the time EM ceased being employed by Rutgers in or about July 2012.

by EM and Coach Rice and a video of portions of a Rutgers' men's basketball game held in February 2012. The administration of Rutgers and all of the personnel within Rutgers' men's basketball program cooperated in full with our investigation. This cooperation included timely and thorough responses to our requests, production of all material witnesses, production of many documents and the facilitation of numerous interviews.

Based on our witness interviews, our review of the above materials and our analysis of applicable Rutgers policies and regulations, we find as follows:

1. While it is clear that Coach Rice was extremely demanding of the players, the assistant coaches and himself since his initial hiring as Rutgers men's head basketball coach in May 2010, Coach Rice's conduct does not constitute a "hostile work environment" as that term is understood under Rutgers' anti-discrimination policies. On the contrary, Coach Rice formulated and implemented numerous policies and practices that were designed to, and did, operate to improve not only Rutgers' men's basketball program, but also to further the athletic and academic performance of all of the student-athletes on Rutgers men's basketball team. These policies and practices, which were not discriminatory against any protected class, included the following:

a. Hiring several reputable, honorable and dedicated assistant coaches and other support personnel who were very familiar with coaching elite high school and college student-athletes;

b. Assigning assistant coaches and other support personnel to be "life coaches" for the Rutgers men's basketball student-athletes for the purpose of assisting the student-athletes to cope with issues relating to academics, basketball and personal matters. The players, especially those who had experienced significant difficulties in their personal

lives, expressed appreciation for the ability to speak with a mentor who could help them overcome challenges they experienced in their lives;

c. Elevating the academic performance of individual athletes as well as the collective grade-point average of the Rutgers men's basketball team as a whole; and

d. Improving the performance of the Rutgers men's basketball team through professional coaching, conducting organized and "intense" basketball practices and creating accountability among players and coaches. The basketball practices generally were "open" and were held in the Rutgers Athletic Center. Despite visits by hundreds of recruits, family members, outside coaches and others, none of those persons complained to AD Perneti that Coach Rice's behavior in practice was improper.

2. Despite both the on-court and off-court improvements within the Rutgers men's basketball program, Coach Rice did engage in certain conduct that went beyond mere cursing, including occasions where Coach Rice used coarse, inappropriate and insulting language during practices and workouts, verbally attacked players in a manner outside the bounds of proper coaching, shoved and grabbed players on multiple occasions and engaged in other boorish and immature behavior. While the players interviewed believed that such actions by Coach Rice were taken because he "cared" about them, he wanted to make them "comfortable" in the "chaos" of a basketball game, or he was merely joking, other witnesses, including the Rutgers coaching staff, agreed that the goal of helping the players to become acclimated to the roughness and "physicality" of the Big East Conference could be achieved through other, less objectionable, means.

3. Coach Rice was previously counseled by AD Perneti concerning his treatment of others. Additionally, some of Coach Rice's assistants felt compelled to speak

with him about his use of offensive language and his negative treatment of certain players. There is no doubt that Coach Rice did significantly improve his behavior thereafter. However, he sometimes continued to engage in conduct that was offensive and insensitive to other persons' sensibilities.

4. Coach Rice admitted that he had an aggressive coaching style, but minimized or failed to disclose certain of his actions when initially questioned by AD Perneti in July 2012. When shown the DVD produced by EM's counsel, however, Coach Rice did acknowledge that certain of his actions were improper and he expressed appropriate remorse.

5. Coach Rice personally engaged in conduct, or tacitly allowed others under his supervision to engage in conduct, that violated policies of the NCAA. Those violations, which appear to be considered relatively minor, included EM actively participating as a "coach" during some basketball practices and Coach Rice attending certain off-season workouts in 2010, shortly after his hiring. Rutgers self-reported these infractions in July of 2012 and issued two (2) letters of admonishment to Coach Rice. In addition to these minor infractions, EM has only recently alleged that he and possibly others provided money and other benefits to players at Rutgers while EM was employed. EM refused to name any players who received such benefits or when he allegedly paid such benefits. He also failed to provide us with any documentary support for his claims that he or others provided any such benefits to any player. Accordingly, we have insufficient evidence to find that any Rutgers player ever received any improper benefits during the period from in or about 2010 through in or about July 2012. We further note that certain payments to players for meals, or for work performed, would not run afoul of NCAA rules.

6. In July 2012, EM's attorney brought to Rutgers' attention certain acts of alleged misconduct committed by Coach Rice during the period of Coach Rice's tenure at Rutgers, but those actions were independent of EM's separation from Rutgers. First, a review of Coach Rice's contract, as well as EM's statements, make it clear that EM was not fired by Coach Rice because Coach Rice had no authority to terminate EM's employment. Instead, the Rutgers Athletic Director, not the head basketball coach, retained the final authority to hire and fire EM. Moreover, based on statements given to us by EM and others, as well as our review of a contemporaneous audio recording of EM and relevant text messages exchanged between Coach Rice and EM, we conclude that EM was not "fired," nor was his employment terminated by Coach Rice in retaliation for EM "blowing the whistle" on misconduct by Coach Rice. EM himself asserted that he was fired by Coach Rice on June 26, 2012 during a momentary telephone conversation because EM had left the Coach Rice basketball camp without permission and, more importantly, against Coach Rice's express wishes. In addition, EM admitted that AD Perneti advised EM on or about Friday, June 29, 2012, that he was not fired. However, EM then failed to attend a meeting as directed by AD Perneti and, based on all of the facts, it appeared that EM had no intention of returning to his position. As a result of EM's failure to appear at the meeting, AD Perneti chose to honor EM's existing contract, but not to extend any new contract for EM to be employed by Rutgers in the future. This decision was not in any way based on EM engaging in protected "whistleblowing" activity. On the contrary, during a July 11, 2012 meeting with AD Perneti, EM's counsel admitted that EM had not notified AD Perneti of alleged misconduct by Coach Rice.

Accordingly, we find that EM's assertion that he was wrongfully terminated from his position at Rutgers is without merit.

PROCEDURAL HISTORY

On Monday, November 26, 2012, AD Perneti met with former Director of Player Development for men's basketball, EM, and two attorneys representing EM. Also present during that meeting were Janine Purcaro, whose duties include directing human resources for Rutgers athletics, and outside counsel for the university, Richard J. Cino, Esq.

During the course of the meeting, EM's attorney advised that they had evidence that Coach Rice had engaged in improper conduct toward Rutgers basketball players. Specifically, the attorney reported that they had compiled a video of Coach Rice being intemperate toward players and others during basketball practices. They alleged that such behavior, which they said included cursing at players, using coarse and inappropriate language, pushing players and throwing and kicking the basketball at practices, amounted to bullying and harassment. Finally, the attorney for EM alleged that Coach Rice had terminated EM's employment in retaliation for EM's "whistleblowing" activity, in violation of New Jersey's Conscientious Employee Protection Act ("CEPA") and in violation of Rutgers' employment policies.

AD Perneti asked to view the video. EM's attorney gave him a Digital Video Disc ("DVD") at this November 26th meeting and the entire group viewed the scenes recorded on the DVD. Rather than a continuous digital video recording of an event, the DVD appeared to contain dozens of brief video clips depicting moments of practices and "workouts" of the Rutgers men's basketball team that were held during the period from September 2010 through in or about February 2012. The clips, which were not in context, showed numerous scenes where Coach Rice had cursed or used coarse and inappropriate language. This section of the video consumed more than 18 minutes of the 30-minute video. The

remainder of the DVD was comprised of approximately 5-6 minutes of brief clips showing Coach Rice kicking or throwing a basketball, and another 5-6 minutes of clips showing Coach Rice or another coach making physical contact with a Rutgers basketball player.

Later that same day, Monday, November 26, 2012, AD Perneti and Ms. Purcaro met with Coach Rice. AD Perneti had Coach Rice view the DVD in his presence and he spoke with Coach Rice about the conduct of Coach Rice as depicted on the DVD. Coach Rice asserted that many of the moments depicted on the DVD were, when viewed out of context, troubling. He did admit, however, that at least some of his conduct was not appropriate and he expressed remorse for his actions. Finally, Coach Rice advised AD Perneti that most of the events depicted on the DVD had occurred in 2010 and early 2011, during his first year as coach at Rutgers, and that his conduct toward the players since that time had significantly improved.

After meeting with Coach Rice, AD Perneti contacted John Wolf, Esq., the Interim General Counsel for Rutgers University. Mr. Wolf, in turn, contacted the undersigned the following day, Tuesday, November 27, 2012, and initiated this investigation. Mr. Wolf expressly advised that we should follow the relevant evidence wherever it might lead.

We met with Mr. Wolf, AD Perneti and Janine Purcaro on the afternoon of November 27, 2012, and began our investigation that same day. At the outset, we met with Coach Rice to advise him that we were commencing the investigation and that our inquiry would be thorough and fair. We also obtained Coach Rice's personnel file, we arranged to interview Coach Rice's three (3) assistant men's basketball coaches the following day and we reviewed and analyzed the video clips on the Kozyra DVD numerous times to identify

the central actions of Coach Rice that formed the basis for Mr. Kozyra's and his client's assertions.

During the next several days, we interviewed the three (3) men's assistant basketball coaches, six (6) Rutgers men's basketball players, Coach Rice, AD Perneti, Janine Purcaro and multiple administrators and employees within the Rutgers men's basketball program. Thereafter, we conducted follow-up interviews with several of these individuals and we interviewed others as warranted. We also obtained and reviewed copies of the employment contracts of Coach Rice and EM, and we obtained and reviewed the job description for EM's job as "Director of Player Development."

As part of our charge, we obtained copies of correspondence from July 2012 relating to two (2) minor NCAA violations, both of which resulted in Rutgers issuing a letter of admonishment to Coach Rice. We further reviewed organizational charts for the Rutgers Athletic Department, we reviewed lists of the persons who attended the Rutgers men's basketball practices and we examined the 2010-2011 and 2011-2012 schedules and rosters for the men's basketball team. We subsequently interviewed the sports psychologist at Rutgers and we reviewed an assessment of Coach Rice that the Rutgers sports psychologist had prepared in March 2012.

Ultimately, we interviewed EM in the presence of his counsel and we conducted additional interviews of one current Rutgers men's basketball player and one former player. We then conducted follow-up interviews of Coach Rice and the three (3) assistant men's basketball coaches.

Thereafter, we contacted EM's counsel to request any physical evidence he had to support his claim concerning any coach purchasing items for players. None was provided.

We further pursued a “rumor” that a player had been given some payment to entice him to attend Rutgers. Again, we found no evidence to support such a claim.

This Report contains the findings of our investigation.

FACTUAL DISCUSSION

I. Background

In or about May 2010, Rutgers hired Coach Rice as Head Coach of the Rutgers men’s basketball program. As part of the hiring process, Rutgers conducted interviews of Coach Rice and received information about Coach Rice from numerous sources. Coach Rice had significant experience in coaching basketball at the college level, having served as an assistant coach at multiple universities and as Head Coach at Robert Morris University (“Robert Morris”).

It is important to note the reasoning of AD Perneti when he first hired Coach Rice in 2010. The former Rutgers men’s basketball coach had been dismissed. The team had been unsuccessful for several years both in the classroom and on the basketball court. To make matters worse, three (3) of the best players from the 2009-2010 Rutgers men’s basketball team had transferred to other schools. Moreover, by the time Coach Rice was hired, the recruiting period, during which college coaches recruit high school and junior college basketball players, had been completed. As a result, only six (6) scholarship basketball players from the 2009-2010 team remained with the Rutgers men’s basketball program.

With Coach Rice’s hiring, Rutgers had a coach who had been successful at the college level, both as an assistant coach and as a head coach. At his most recent college, Robert Morris, Coach Rice had led his teams to qualify for the NCAA basketball

tournament in two consecutive years. Coach Rice was known to be intense, energetic and fiercely competitive. He also was known to require that the student-athletes on his basketball teams succeed in their academics as well as in basketball. To that end, Coach Rice believed that the entire “culture” of the Rutgers men’s basketball program had to be changed. Among the most noteworthy “cultural” changes was to assign each player a “life coach.” The role of the life coach, usually filled by one of the basketball assistant coaches or administrators, was to assist the players in coping with any issues that might occur in the player’s life, whether it related to basketball, family life, social relationships or academics. Coach Rice then held each player and his “life coach” accountable for that player’s academic success. Players were required to communicate with their life coach and with Coach Rice about their courses at Rutgers. They also were required to attend all of their classes and, if they failed to do so, Coach Rice would require them to do additional running or other conditioning exercises at basketball practice. The players’ academic test schedules also were monitored to ensure that each player was given sufficient time to study. In sum, Coach Rice instilled new and higher standards for the players on the Rutgers men’s basketball team and he held himself and his assistants accountable to ensure that the student-athletes were working to meet those standards.

Similarly, Coach Rice also installed a new “culture” for the men’s basketball team in both practices and in its games. This was especially critical because Rutgers played basketball in the Big East Conference, a conference well known for having basketball teams that play intense, physically demanding basketball, with players who are big, strong and extremely aggressive. To assist him, Coach Rice hired three assistant coaches. Each of the coaches had experience in playing basketball and in coaching at the college level. One of

those assistants, David Cox, also had a significant background in education, having served seven (7) years as a school administrator at a Washington, D.C.-area preparatory school. Certain of the coaches also had professional or personal ties to geographic areas where Rutgers could recruit players. Finally, Coach Rice hired a number of administrators and assistants, one of whom was EM.

Coach Rice was concerned that, with the ranks of his team having been depleted by players leaving the program via transfers or graduation, his remaining players would be unable to compete with the bigger, stronger and more talented teams in the Big East Conference. This also posed a potential risk of physical injury because players in the Big East are known to push, shove, and elbow each other during games. As a result, as soon as basketball practices began in the Fall of 2010, Coach Rice took immediate steps to prepare his team for the Big East basketball season.² He created an “us against them” environment, often reminding the team that virtually everyone outside the program was predicting they would fail. Coach Rice, however, advised the players that they would not fail. He also told them beforehand that he would push them harder physically, mentally and emotionally than they had ever been pushed before. He let them know that he would try to upset them during practices by cursing at them, yelling at them and otherwise creating “chaos” on the court. He also admonished them to ignore the harsh tone of his message, but always to listen to the message itself. In the end, Coach Rice communicated to the players and coaches that he wanted to make them “comfortable in chaos,” a theme that was repeated to us by virtually

² Coach Rice’s concerns about his team were shared by many persons familiar with college basketball in general, and with Rutgers in particular. Many sports reporters and experts on college basketball predicted that the 2010-2011 Rutgers team could not effectively compete in the Big East Conference. Indeed, the players were once dubbed the “leftovers,” a reference to the few scholarship players who remained at Rutgers after three of the best players had transferred.

every coach, every player and every basketball administrator that we interviewed. All of the players and coaches with whom we spoke also conveyed to us that they fully understood that the “chaos” created by Coach Rice in practice was not mean-spirited, but was designed to prepare the players to become more competitive and to remain calm when similar “chaos” would occur in their games. Indeed, newspaper accounts at the time reflected comments from Rutgers basketball players, stating their understanding of Coach Rice’s philosophy that they cannot control everything that might happen during a basketball game, but they can control their response to those events.

Coach Rice’s “new” culture within the Rutgers men’s basketball program helped the players to attain immediate positive results in their basketball games and in their academics. Despite the dearth of scholarship players in the 2010-2011 season, the team was competitive against most of its opponents. The following year, the Rutgers team achieved similar results despite having seven (7) freshmen on the squad. More importantly, the players, coaches and the administrators worked in concert to improve players’ performance in the classroom. As a result, the team’s grade-point average rose to approximately a “B” average even though many of the players were once considered “at-risk” for academic failure. Moreover, all seniors within the men’s program have graduated from Rutgers since Coach Rice arrived.

Based on our interviews, it appears that Coach Rice’s approach during the 2010-2011 season was more strict than during the following season. His behavior toward players included insulting language and outbursts such as pushing a player. The coaching staff as a group believed that this behavior, while sometimes harsh, was generally necessary to change a culture of mediocrity that existed within the men’s basketball program prior to Coach

Rice's hiring. They also believed that the team, comprised of several seniors, understood that Coach Rice's treatment of them was designed to prepare them for the rigors of Big East Basketball. The following year, however, virtually everyone, including EM, saw Coach Rice make efforts to be more positive toward the players, several of whom were freshmen. This change in approach was deemed necessary because the freshmen players were less responsive to Coach Rice's instruction when he was too "negative."

II. The Correspondence Between EM's Counsel and Rutgers

A. Attorney Kozyra's July 11, 2012 Letter

EM's initial complaint of retaliation is set forth in the July 11, 2012 correspondence sent by his attorney Barry Kozyra, Esq. to Richard L. Edwards, Rutgers' Acting President, and AD Perneti. In part, attorney Kozyra alleged that Rutgers had terminated EM's employment

[d]ue to (EM's) inquiries and discussions with others regarding Mr. Rice's hostile and abusive treatment of his players and staff, as well as his illegal business, coaching and recruiting practices during his tenure with the University - all actions which have been condoned, and hence promoted, by the University and its representatives. (bold in original)

Attorney Kozyra further asserted that Coach Rice's practices included "bullying of his players and staff", including physical, mental and verbal abuse, use of "extremely derogatory language" in violation of Rutgers' policies against "Verbal Assault, Harassment, Intimidation, Bullying and Defamation," and "promot[ing] and foster[ing] an environment of non-compliance" with NCAA rules and regulations. Although Mr. Kozyra stated in his July 11 letter that he had both video and audio evidence of these transgressions, he failed to provide Rutgers a copy of any such evidence with his letter.

Attorney Kozyra's complaint was not a complete surprise to AD Perneti. Indeed, AD Perneti had already personally taken disciplinary action against Coach Rice on two prior occasions in early 2012 for some of the same behavior cited by attorney Kozyra. On the first occasion, he reprimanded Coach Rice for yelling at a basketball official, an outburst that had caused the official to eject Coach Rice from a game. Mr. Perneti also arranged to have the University's sports psychologist become more involved with the men's basketball program to help monitor Coach Rice's coaching methods with players and coaches. The second occasion occurred when an upperclassman on the Rutgers men's basketball team complained that he felt he had been "bullied" and treated unfairly by Coach Rice. On further inquiry by AD Perneti, the player disclosed his belief that Coach Rice was being too lenient with the freshman players when they made mistakes and, conversely, was less patient and "negative" with the upperclassman when he displeased Coach Rice. AD Perneti again met with Coach Rice, reprimanded him and cautioned him that mistreatment or "singling out" of players would not be tolerated going forward.

With the exception of the complaint by the one player, at no time did AD Perneti believe that Coach Rice's conduct toward players constituted "abuse", nor did he understand that attorney Kozyra had evidence of inappropriate behavior beyond that which previously had led AD Perneti to reprimand Coach Rice. Attorney Kozyra's claim that he had videotape evidence of "abuse" also seemed hollow to AD Perneti since the Kozyra letter itself requested that Rutgers produce the video for every basketball practice that Rutgers had held from the time Coach Rice was hired until July 11, 2012. Nevertheless, AD Perneti decided to contact Coach Rice about the unsubstantiated claims made by EM's lawyer. Upon questioning, Coach Rice admitted that he did scream and curse often during

practices, but he denied that his aggressive and demanding coaching style constituted “abuse.” He further denied the other claims contained in the lawyer’s letter that related to abuse of players or that related to Coach Rice’s basketball camp. Coach Rice did disclose that his attendance at certain off-season workouts of the Rutgers men’s basketball team shortly after he was hired at Rutgers in 2010 may have run afoul of NCAA rules relating to a coach being present at an off-season workout. Coach Rice also pointed out that he or the other Rutgers’ coaches viewed the videos of all practices and there was no evidence of improper physical abuse of the players.

AD Perneti did not rely solely on Coach Rice’s responses to determine whether the claims made by EM’s counsel were baseless. AD Perneti had personally attended numerous practices of the Rutgers men’s basketball team. He was thus aware of Coach Rice’s coaching methods and had previously counseled Coach Rice about the need to treat players, coaches and basketball officials with respect. At no time during those visits, however, did AD Perneti observe any conduct by Coach Rice that would be considered “abusive” of college athletes. Moreover, AD Perneti knew that the Rutgers men’s basketball practices generally were held in the Rutgers Athletic Center (“RAC”) and that, with the exception of certain practices, they were “open,” i.e., virtually anyone could sit in the arena or stand in the concourse and watch the team practice. As a result, reporters, high school coaches, recruits, parents and Rutgers boosters had attended practices over a two-year period and none of those individuals had ever complained to AD Perneti that Coach Rice had engaged in improper treatment of the players or coaches. AD Perneti thus was confident that attorney Kozyra’s claims of rampant “abuse” and an “environment” of non-compliance within the men’s basketball program were not true. This conclusion was

buttressed by the fact that, rather than produce “audio or video” evidence that he claimed to possess, Mr. Kozyra had requested that Rutgers produce a large collection of material to help support the claims that Mr. Kozyra had made. Based on the remainder of the Kozyra letter, it was clear that the lawyer was seeking money from Rutgers without providing any evidence to support a claim.³

B. Rutgers’ Response to Attorney Kozyra’s July 11, 2012 Letter

Without any evidence being supplied by EM’s lawyer to support his conclusory and non-specific claims of misconduct by Coach Rice toward players, and with Coach Rice denying any wrongdoing beyond the known prior issues, AD Perneti had no credible evidence to warrant further inquiry or further discipline beyond that which he previously had imposed. Nevertheless, AD Perneti, acting through the Rutgers General Counsel’s Office, sought and retained the services of an outside counsel to deal with the issues raised in the July 11, 2012 letter from EM’s lawyer. By letter dated July 19, 2012, that outside counsel, John K. Bennett, Esq., responded to the July 11, 2012 Kozyra letter. In particular, Mr. Bennett pointed out that EM’s lawyer had made conclusory claims without enclosing any evidence to support those claims. Mr. Bennett then invited EM’s attorney to produce whatever evidence he had to support his allegations in order to allow Rutgers to review the evidence and to make an informed and appropriate decision. Unfortunately, EM’s counsel failed to supply any such evidence in a timely manner. Rutgers further expressed its

³ In reviewing the entirety of Coach Rice’s first two years as Coach at Rutgers, AD Perneti found evidence of potential secondary NCAA compliance violations. Based on his own personal observations of open practices, AD Perneti believed that EM’s presence at one or more practices may have evolved from permissible “cheering” for players to impermissible “coaching”. Such “coaching” would constitute a secondary NCAA violation. Upon consulting with Rutgers’ athletics compliance director, AD Perneti concluded that a violation may have occurred. After making these findings, Rutgers self-reported these violations to the appropriate compliance authority and self-imposed its own sanctions against the men’s basketball coach.

willingness to meet with Mr. Kozyra to discuss the details of any factual basis for Mr. Kozyra's claims.

Independently, Rutgers responded to the July 11, 2012 request from EM's counsel for the videos of all Rutgers men's basketball practices. Daniel McMullen, the video coordinator for the men's basketball team, compiled all of the practice videos and "burned" them onto DVDs supplied to him by EM's lawyer. This compilation included 219 DVDs recording hundreds of hours of the Rutgers men's basketball team practices during the 2010-11 and 2011-12 seasons. The videos, as well as various others materials, were forwarded to attorney Kozyra.

C. Attorney Kozyra's September 26, 2012 Letter

Several weeks passed before EM's counsel communicated with Rutgers' outside counsel, Mr. Bennett. By letter dated September 26, 2012, attorney Kozyra again asserted that EM had been "wrongfully terminated" in July 2012. Attorney Kozyra further stated that his law firm had completed its "preliminary investigation into this matter," including the review of the video recordings that had been supplied to the Kozyra law firm by the university. Once again, however, the attorney failed to enclose any such evidence with his letter. Instead, the attorney sought a meeting with Rutgers' representatives to discuss his alleged evidence "in further detail."

D. The Parties' November 26, 2012 Meeting

The parties ultimately met on November 26, 2012. Attendees at this meeting included attorney Kozyra and his client, EM, Rutgers' outside counsel Richard Cino, Esq., AD Perneti, and Janine Percaro, whose official job title is "Chief Financial Officer-Athletics", but who also handles human resources duties for the Rutgers Athletic

Department. During the course of the meeting, attorney Kozyra again asserted that his client was wrongfully terminated in retaliation for his complaining that Coach Rice had engaged in various acts of misconduct toward players and coaches. Attorney Kozyra did not initially produce any video evidence during the meeting, but he ultimately did so after AD Perneti requested to see the video evidence attorney Kozyra had claimed to possess.

The evidence produced by attorney Kozyra did not in any way touch upon his claim that EM's employment was "wrongfully terminated." Instead, it consisted of a single DVD containing many brief clips of practices of the Rutgers men's basketball team. Collectively, these clips contained a total of 30 minutes, or less than one-half of one percent, of the entirety of the practices held by the Rutgers basketball team during Coach Rice's tenure. The clips were compiled from the many hours of videos that had been produced by Rutgers in response to attorney Kozyra's July 11, 2012 request pursuant to New Jersey's Open Public Records Act.

During the November 26, 2012 meeting, AD Perneti asked EM directly why he did not come to AD Perneti if he felt that he or others had been improperly treated by Coach Rice. EM did not answer. Instead, his attorney interrupted, "because he was afraid for his job." Stated differently, rather than act as a "whistleblower", it appears that EM had made a deliberate decision not to bring his complaints to Rutgers administrators outside the basketball program.

At the conclusion of the meeting, Mr. Perneti and Mr. Cino advised that they needed to consider the matter further before deciding what action should be taken. EM's counsel advised that they were seeking more compensation for EM even though he had been paid all monies due him under the terms of his expired one (1)-year agreement. Their

stated reasoning for seeking additional money from Rutgers was that Rutgers had orally advised EM that his expiring contract would be renewed for another year and EM's lawyer was threatening to make public his claim that EM was allegedly fired in retaliation for lodging complaints against Coach Rice. EM's attorney agreed that they would give Rutgers a reasonable period of time to decide what it would do.

E. AD Perneti's and Janine Purcaro's November 26, 2012 Meeting With Coach Rice

Later that same day, Mr. Perneti and Ms. Purcaro met with Coach Rice. They showed the DVD clips to Coach Rice and AD Perneti expressed his dismay as to certain clips that appeared to show Coach Rice insulting, demeaning and, in some cases, coming into overly aggressive physical contact with Rutgers men's basketball players. This conduct included referring to players as "pussies," "idiots," "fags," "faggots," and "bitch." These words were often preceded by the word "fucking." Coach Rice explained that many of the clips contained on the DVD are not inappropriate when considered in context, but he did acknowledge that some of the conduct depicted on the video was not appropriate under any circumstances. Coach Rice adamantly denied, however, that he "fired" EM or that he had retaliated against EM for objecting to, or refusing to participate in, alleged misconduct by Coach Rice. On the contrary, Coach Rice pointed out that EM had never objected to, or refused to participate in, the activities conducted by Coach Rice.

F. Rutgers' Retention of Connell Foley LLP to Investigate the Claims of Attorney Kozyra

Immediately after the meeting with Coach Rice on November 26, 2012, AD Perneti contacted Rutgers' Interim General Counsel, John Wolf, Esq. As Interim General Counsel, Mr. Wolf is the Chief Legal Officer and Advisor for the entire university. The next day,

Tuesday, November 27, 2012, Mr. Wolf contacted the undersigned. At Mr. Wolf's request, I traveled to the Rutgers campus and met with him, AD Perneti and Janine Purcaro that afternoon. We commenced our investigation that same day.

Ms. Purcaro and the undersigned met briefly with Coach Rice at the RAC that same evening. Coach Rice was advised that the University had retained Connell Foley to investigate the matter, that the matter would be investigated in a fair and unbiased manner and that the investigation would require us to interview numerous persons associated with the Rutgers basketball program. Coach Rice was further advised that the investigation would be conducted expeditiously and that he would be given a full and fair opportunity to address all issues. Finally, Coach Rice was instructed that he was not to speak with anyone about the investigation.⁴ On that same date, the University produced Coach Rice's personnel file, a copy of the DVD given to AD Perneti the previous day, the July 11, 2012 initial letter from Mr. Murdock's counsel, Mr. Bennett's July 19, 2012 response, and written statements by Assistant to the Head Coach Brad Wachtel and Associate Head Coach David Cox. Ms. Purcaro also confirmed with the University's central personnel office that it did not possess any other personnel file for Coach Rice.

G. Attorney Kozyra's November 29, 2012 Letter

On November 29, 2012, Attorney Kozyra sent a letter to Rutgers' outside counsel. In that letter, the attorney claimed that "many months ago," EM had "raised" Coach Rice's "inappropriate behavior and acts." The letter further stated that EM was "seriously

⁴ Separately, AD Perneti issued a written directive to Coach Rice advising him that, pending the conclusion of the investigation, videos of all practices were to be given to the Athletic Director's office the morning after the practice, and further, that Coach Rice was not to engage in any type of retaliatory action toward any individuals based on their cooperation with the instant investigation. He further reminded Coach Rice of his obligation to comply with all university policies.

damaged as a result of doing what was right - standing up to an abusive bully who has acted in a most outrageous manner for over two years.” It further alleged that Coach Rice had “intimidated and injured scores of players and his entire coaching staff.” The letter then set a December 6, 2012 deadline for Rutgers “to seriously address all of the issues raised [during the parties’ November 26, 2012 meeting],” or to face a lawsuit by EM.

III. The Investigation

A. The DVD Provided by Barry Kozyra, Esq. to AD Perneti on November 26, 2012

We began our investigation by reviewing and analyzing the video clips contained on the DVD produced by EM’s counsel on November 26, 2012. The DVD apparently was professionally edited. It contained certain graphics, as well as short video clips. The clips were compiled, at least in part, from hundreds of hours of videos of the practices and workouts of the Rutgers men’s basketball team from September 2010 through February 2012. This coincided with the time period that Coach Rice had served as the coach of the Rutgers men’s basketball team. The original videos were provided by Rutgers to EM’s counsel pursuant to an Open Public Records Act (“OPRA”) request made by EM’s counsel in his July 11, 2012 correspondence to Rutgers Interim President Richard Edwards and AD Perneti.

The initial screen on the DVD shows an insignia for “Rutgers,” together with three (3) subtitles:

1. “Kicking and Throwing the Ball;”
2. “Physical to Player;”
3. “Verbal to Player and Other Outbursts.”

Upon “clicking” each subtitle, a series of streaming video clips appears, each showing what the editor of the DVD determined fell within that particular category. Thus, for example, under the first subtitle, the clips on the DVD showed Coach Rice (a) kicking a basketball on three separate occasions; (b) throwing a basketball at or toward basketball players; and (c) passing a basketball with two hands by casting it at the feet or legs of a player.

Each clip was brief, usually lasting less than 20 seconds. Based on the scenery shown on each video clip, it was clear that the individual events took place at different times and in different locations. Based on what appeared to be significant editing, the context of each event recorded was not supplied. Thus, for example, where a clip showed Coach Rice cursing or using a derogatory term, the clip did not show what had occurred during the prior few minutes that led to the cursing. Nevertheless, whether shown in context or not, it did appear that some of the actions by Coach Rice included physical contact with a player that could not be justified. The only caveat with that hypothesis was that we did not know at that initial point whether the original videos had been edited to make Coach Rice’s actions appear more shocking to the viewer than those actions appeared when viewed on the original videos.

B. The Collection of Videos of Practices of the Rutgers Men’s Basketball Team

We viewed the Kozyra DVD several times on November 27, 2012. The following day, we presented portions of the DVD to the Associate Head Coach and the two Assistant Coaches of the Rutgers basketball team. They collectively pointed out that the scenes depicted on the DVD were out of context, that some of the scenes actually showed Coach Rice playfully kicking a player in the buttocks for doing something positive, and that the

DVD represented a very small fraction of all of the practices and workouts held by Coach Rice since the Fall of 2010. They were unanimous in stating that the clips shown on the DVD were not representative of the Rutgers men's basketball program or of Coach Rice.

In an effort to determine whether we could put the most graphic scenes from the DVD in context, i.e., the scenes involving physical contact with a player, we spoke with the video coordinator for the Rutgers men's basketball team. At our request, he was able to match many of the video clips from the Kozyra DVD with the original Rutgers video of the practice or workout during which that particular scene was recorded. To put each scene in better context for us, he first supplied us with a DVD showing not only the particular scene shown on the Kozyra DVD clip, but also the three minutes of practice that occurred before the scene in the clip, as well as the three subsequent minutes of that same practice. The video coordinator then compiled those in-context scenes in two separate DVDs, one for the scenes that occurred during the 2010-2011 school year and the other for scenes that occurred during the 2011-2012 school year. Following the same process, he later supplied us with two separate DVDs containing the six (6) minutes of context for the clips showing Coach Rice kicking or throwing a basketball.

In addition to the above, we sought to determine whether the actions of Coach Rice, as shown on the Kozyra DVD, were representative of Coach Rice's conduct in general during the Rutgers men's basketball team's practices and workouts. To that end, we asked the video coordinator to supply us with the entire DVD he maintained for each one of the practices or workouts held on the dates where the Kozyra DVD showed Coach Rice throwing or kicking a basketball or making contact with one of the basketball players. In total, we were supplied with approximately 50 DVDs depicting numerous practices and

workouts of the Rutgers basketball team that were held during the period September 2010 through February 2012. These practices represented more than one-fifth (1/5) of the total number of basketball practices and workouts held during that time period. The cumulative elapsed time of those DVDs was more than 50 hours. We are satisfied that these DVDs are far more representative of Coach Rice's actions than the video composed by Mr. Kozyra, which video showed less than 30 minutes of selected scenes of Coach Rice cursing, using inappropriate language, kicking or throwing a basketball, or making contact with a player. Additionally, based on our initial reviews it appeared that several of the clips on the Kozyra DVD were shown at least twice. This indicated that the scenes depicted on the DVD were not representative of all practices, nor did the individual compiling the clips seek to compile scenes that would be representative of all practices.

IV. The Scope of the Investigation

We were retained by Rutgers to investigate the following matters:

1. Allegations regarding Coach Rice's conduct as head coach of the Rutgers men's basketball team and a "hostile" work environment;
2. Allegations regarding Coach Rice's conduct and Rutgers' policies relating to bullying, harassment or assault;
3. Allegations regarding Coach Rice's violation of NCAA Rules; and
4. Coach Rice's conduct and Rutgers' Conscientious Employee Protection Policy.

FACTUAL FINDINGS AND ANALYSIS

I. Allegations Regarding Coach Rice’s Conduct as Head Coach of the Rutgers Men’s Basketball Team and a “Hostile Work Environment.”

A. Rutgers’ Anti-Harassment Policy

The Rutgers’ policy prohibiting discrimination and harassment that was in effect at the time of the alleged misconduct (the “Harassment Policy”) is modeled after similar state statutes. It prohibits discrimination or harassment directed toward an individual or group, or experienced by an individual or group, based on membership in a protected category. The protected categories enumerated in the policy include **“race, religion, color, national origin, ancestry, age, sex, sexual orientation ... and any other category protected by law ...”** (emphasis added). The Harassment Policy, which expressly addresses the issue of “hostile work environment” defines harassment as:

...any conduct directed toward an individual or group based on one or more of the categories in Section I above that is sufficiently severe or pervasive to alter an individual’s employment conditions, educational environment, living environment or participation in a university activity, and that creates an intimidating, offensive or hostile environment for employment, education, or participation in a university activity. (Footnotes omitted).

The Harassment Policy further provides that a determination of whether particular “physical,” “non-verbal,” or “verbal” conduct will constitute a violation of the Harassment Policy will be judged by an objective “reasonable person” standard under the circumstances.

B. Evidence Relating To Coach Rice’s Behavior Toward Players and Coaches

As set forth above, the concept of a “hostile work environment” requires that the “hostility” be directed at an individual or group based on membership in a “protected

category,” such as “race, religion, color, national origin, ancestry, age, sex, [or] sexual orientation.”

In this case, the videos as well as the information provided by all witnesses, including EM, reflect that Coach Rice’s actions toward players and coaches were in no way motivated by animus, or directed, toward any particular individual or group based on their membership in any protected class enumerated in the policy. Instead, Coach Rice’s aggressive coaching style, including his disciplinary actions, were directed at all players irrespective of their race, religion, ethnicity, or sexual orientation, or their membership in “any other category protected by law.”

C. Recommendation

Accordingly, we find that the conduct of Coach Rice did not create a “hostile work environment” as that term is understood in connection with anti-discrimination and anti-harassment policies. Instead, based on our review of the dozens of hours of videos, our interviews of numerous witnesses and our review of the applicable relevant documents and Rutgers’ policy, we find that Coach Rice’s behavior toward all players and coaches was motivated solely by his belief that yelling and being aggressive toward players during practices ultimately would cause them to play better during the team’s basketball games.

II. Allegations Regarding Coach Rice’s Conduct and Rutgers’ Policies Relating to Bullying, Harassment or Assault.

While we have not found that Coach Rice’s actions constituted “harassment” based on an individual’s membership in a protected class, that does not end the inquiry. Coach Rice’s Contract with the University did contain certain provisions that regulated Coach Rice’s conduct. Furthermore, Rutgers maintains a broad policy protecting people and property from violence in the workplace.

A. Coach Rice's Contract

Coach Rice was hired as Rutgers' Men's Basketball Head Coach pursuant to a Memorandum of Agreement ("MOA"), dated May 6, 2010. The MOA, as well as the subsequent Employment Agreement signed by Coach Rice, required (a) that Coach Rice comply with all Rutgers policies; and (b) that Coach Rice not engage in conduct tending to bring "shame or disgrace" to Rutgers as determined in good faith by the Director of Athletics.

B. Rutgers' Workplace Violence Policy

Rutgers' Workplace Violence Policy (Section 60.1.13) addresses the issue of workplace violence and by its terms promises a university response "to violence, threats of violence, harassment, intimidation," and disruptive behavior of a threatening nature towards people or property. The policy applies to "all areas of University operations and programs and to University facilities and off-campus locations where University business is conducted. It also applies to all University employees...with respect to conduct that arises out of their employment status...." Specifically, workplace violence is defined as "any actual or threatening behavior of a violent nature, as understood by a reasonable person, exhibited by faculty, staff... or others within the scope of this Policy." Examples of workplace violence described in the policy include:

[i]ntentional physical contact for the purpose of causing harm (such as slapping, punching, striking, shoving, or otherwise physically attacking a person); [and] [m]enacing or threatening behavior (such as throwing objects, waving fists, damaging property, stalking, or otherwise acting in an aggressive manner; or, using oral or written statements specifically intended to frighten, coerce, or cause distress) **where such behavior would be interpreted by a reasonable person as being evidence of intent to cause physical harm to individuals or property.** (Emphasis added).

C. Coach Rice's Treatment of Players

Here, we must examine the circumstances of Coach Rice's behavior. As stated at the outset, even prior to his hiring, Coach Rice was known to be an active, passionate and outspoken coach who conducted intense practices. He communicated in advance with Rutgers and with the Rutgers basketball players that he was going to change the culture of the basketball program. He advised the players in advance that he would physically and mentally challenge them so that they would become "comfortable in chaos."

In viewing the videos of the daily practices, it appears that Coach Rice did meet the expectations that he had created when he was first hired. He was passionate, energetic and demanding. He often yelled at players and used profanity. He threw or kicked the basketball, or broke his clipboard, when individual players or the team as a whole repeated mistakes. These episodes were not isolated, but they were relatively brief. In contrast, Coach Rice also spent considerable time instructing players concerning the details of the team's basketball plays on offense and its strategy on defense. He then had the team practice those plays and defenses over and over. Contrary to the statements made to Rutgers representatives by EM's counsel, it appears that virtually every practice was designed and scheduled to include particular basketball-related drills, to practice particular basketball plays, and to engage in intrasquad scrimmages. The practices were organized tightly and focused on basketball, and it was apparent that the entirety of each practice was also designed to increase the stamina and overall physical conditioning of each player.

Coach Rice also intentionally created "chaos" throughout practices. Players, coaches and even staff standing on the sidelines were heard to yell, cheer, talk and clap during basketball drills. According to the coaches and others whom we interviewed, much

of this activity was designed to simulate at least some of the noise and chaos that would be generated during actual games, many of which would be held before noisy and sometimes hostile crowds in an opposing team's arena. Coach Rice also used physical drills during practices in which players would set "picks" that would cause an opposing defending player to collide with another player. Similarly, Coach Rice conducted rebounding drills where he or another coach would throw the basketball at the basketball rim and the players would physically push or "box out" each other in an effort to retrieve the ball. These practice drills, as well as the physical contact among the players, are an expected part of basketball. Coach Rice also implemented drills in which coaches would strike players with foam pads, often slapping players with the pads as the players performed lay-up drills close to each basket. This drill again simulated the physical contact that players would experience during the games, such as plays where a defending player would bump into or slap an offensive player as the latter moved in close proximity to the basketball hoop.

Against this background, it appears that most of Coach Rice's actions did not constitute improper "workplace violence" any more than football games or football practices constitute "workplace violence."⁵ These are contact sports, often involving physical collisions and other significant physical contact that is not acceptable outside the sports arena. Along with those sometimes violent collisions, competing basketball players and coaches often curse at one another and use other foul and inappropriate language while involved in a game. Based on our interviews of both coaches and players, it is clear that all

⁵ We recognize that the physical contact in basketball is, generally speaking, significantly less than the physical contact that occurs in football. However, the instances where Coach Rice made contact with the Rutgers players, including pushing and shoving were generally similar to the types of contact a player would experience during a Division I college basketball season. At no time did it appear that Coach Rice intended to physically harm any player.

of the players involved were aware of the pushing, shoving, blocking, tripping and other physical impositions that take place at the NCAA Division I level in college basketball. They also were generally aware of the “trash talking” or name calling that occurs regularly in college basketball. This is especially true here, where, according to players and coaches, Coach Rice had made it clear to the players, coaches, administration and the public from the outset that the training he believed was necessary to prepare to play in the Big East Conference would be not only rigorous, but “chaotic.”

Based on the credible information provided to us, we find that many of the actions of Coach Rice, while sometimes unorthodox, politically incorrect or very aggressive, were within the bounds of proper conduct and training methods in the context of preparing for the extraordinary physical and mental challenges that players would regularly face during NCAA Division I basketball games. This permissible training includes screaming at players, cursing, using other foul and distasteful language and expressing frustration and even anger at times. It also includes physical contact during drills and unorthodox training methods to simulate the dramatic and unexpected events that occur during actual games.

However, all of the coaches whom we interviewed recognized that there are limits to the type of conduct that is considered acceptable in the training of college basketball student-athletes. While yelling or cursing at a player, even repeatedly, can be condoned as necessary to instill discipline in a player, or to “break him down” in order to “rebuild” him as a better player, most witnesses with whom we spoke agreed that it is not acceptable to verbally and repeatedly curse at a college player in a degrading fashion, especially if that

player may not recognize the coach's behavior as a method to help the player improve.⁶ It also is not acceptable for any coach at any time in a university setting to refer to players using curse words accompanied by slang and derogatory references to homosexuals such as "fags" or "faggots," etc.

Similarly, while coaches may sometimes make physical contact with players on the basketball court, including pushing them, slapping them with pads during certain drills, tapping them in the head or even "flicking" basketballs at a player's feet as a means to train the player to remain controlled in stressful situations, no witness stated to us that it is necessary or acceptable for a coach to shove players in the back or to strike them with two hands on their chest outside of a drill. We also have received no evidence showing that it is acceptable for a coach to kick a player in the buttocks out of frustration, to hurl a basketball at a player in anger because the player made a mental mistake during a drill, or to slap a player repeatedly from behind with a blocking pad after the player has completed the drill sequence. The actions recited above coincide with specific actions by Coach Rice that were depicted on the DVD supplied by attorney Kozyra, as well as on the videos we reviewed. We are mindful that these actions constituted a small fraction of the total practice time of the men's basketball team over a two-year period. Nevertheless, these improper actions, even if sometimes done in jest, constitute grossly demeaning behavior directed at players, and occasionally at coaches, that do not appear necessary to build a high quality basketball program or to build a winning Division I basketball team. Based on the interviews we conducted, the many hours of videos that we reviewed and common sense, this behavior by

⁶ From our interviews, it appeared that all of the players understood Coach Rice's behavior was a coaching method rather than an effort to intimidate players. Interestingly, one former player appeared to be more upset, not when Coach Rice was strict with all of the players, but when Coach Rice was more lenient toward the younger, less experienced players on the team.

a coach has no place within a college basketball program, especially where some of the actions, when viewed in context, appear to be taken in anger or frustration. A reasonable person could interpret some of this behavior “as being evidence intent to cause physical harm” to another individual.

Despite our observations of inappropriate behavior by Coach Rice, the witness statements and many of the documents we have reviewed consistently support the conclusion that much of Coach Rice’s aggressive conduct, including cursing or making players “uncomfortable”, was designed as part of the training to help the players deal with the same type of physical contact and mental stress that the players would face during the intensity of their basketball games. We also are mindful of information provided to us by EM, by Associate Head Coach David Cox, by AD Perneti, and by the sports psychologist working for Rutgers. All of these persons observed that Coach Rice’s conduct had improved when others advised him that his overly critical style was counterproductive for certain players. Finally, we note that several months prior to attorney Kozyra issuing his July 11, 2012 letter, AD Perneti had already reprimanded Coach Rice for engaging in some of the same conduct that AD Perneti had found unacceptable.

D. Recommendation

In sum, we believe there is sufficient evidence to find that certain actions of Coach Rice did “cross the line” of permissible conduct and that such actions constituted harassment or intimidation within Rutgers’ Policy, Section 60.1.13. Furthermore, due to the intensity with which Coach Rice engaged in some of the misconduct, we believe that AD Perneti could reasonably determine that Coach Rice’s actions tended to embarrass and

bring shame or disgrace to Rutgers in violation of Coach Rice's employment contract with Rutgers.⁷

III. Allegations Regarding Coach Rice's Violation of NCAA Rules.

After receiving the July 11, 2012 Kozyra letter, AD Perneti spoke with Coach Rice. Thereafter, AD Perneti determined that the Rutgers basketball program may have committed certain secondary violations of NCAA rules. The first violations involved Coach Rice attending certain voluntary workouts in 2010, shortly after Coach Rice was hired. The second violations involved Eric Murdock, a non-coach, actively coaching during Rutgers basketball practices.

Rutgers self-reported these possible violations to the appropriate regulatory body. It also imposed certain sanctions on Coach Rice concerning practices. Finally, Rutgers issued two (2) letters of admonishment to Coach Rice. We believe that Rutgers and AD Perneti acted responsibly with regard to these alleged violations and we thus make no further recommendation on these issues.⁸

⁷ Although Rutgers did implement an anti-bullying policy, we understand that policy applied to students' behavior. Accordingly, we do not find that Coach Rice's actions violated this policy.

⁸ During our interview of EM, he brought to our attention certain other conduct that he believed ran afoul of NCAA regulations, but that he apparently had never objected to while employed at Rutgers. First, he stated that he and possibly others provided certain economic benefits to one or more Rutgers basketball players. When pressed on the issue, however, EM failed to identify any player who had received improper benefits. He also failed to provide any documentary support for his claim. Furthermore, EM admitted that he had no personal knowledge regarding any other coach providing improper benefits to a Rutgers player. Second, EM advised that a former Rutgers player had recently told EM that, at the time the player was transferring from Rutgers, Coach Rice had offered the player money to stay. We spoke with the former player. **REDACTION** He advised us that, at the time of his transfer, Coach Rice had asked him if he was transferring due to money problems and, if so, that Coach Rice could help. The player advised that Coach Rice never paid him any money or offered to pay him any particular amount. We also understand that NCAA rules do permit players to receive certain minimal benefits such as occasional meals or in some cases, special grants. In either case, we

IV. Coach Rice's Conduct and Rutgers' Conscientious Employee Protection Policy

In his July 11, 2012 correspondence, EM's counsel alleged that his client was wrongfully terminated in retaliation for "his exercise of protected activity under New Jersey's Conscientious Employee Protection Act." This statute was enacted generally to prohibit employers from firing an employee in retaliation for the employee "blowing the whistle" on improper or illegal conduct by the employer. N.J.S.A. 34:19-1 et. seq. This same principle of employee protection is memorialized in Rutgers' Conscientious Employee Protection Policy (Policy 60.1.16). ("CEPA Policy"). In this case, it appears that EM's counsel alleges that Coach Rice fired him based on EM "blowing the whistle" on Coach Rice's (a) alleged misconduct toward others, and/or (b) violation of NCAA rules.

Rutgers' CEPA Policy provides in relevant part:

In accordance with its obligations under N. J. Stat. Ann. § 34:19-1 *et seq.*, Rutgers University will not take any retaliatory action against an employee because the employee does any of the following:

1. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy, or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;
2. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry

interviewed Coach Rice and he denied ever offering any money to the former player. Due to the lack of evidence of any improper offer, as well as the former player's admission that he did not receive any improper benefit from this alleged interaction, we have insufficient evidence to support the claims raised by EM during his interview. Moreover, because it appears that EM and his attorney raised these allegations for the first time after EM had ceased working at Rutgers, they clearly played no role in EM's separation from the University.

into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into quality of patient care; or

3. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:
 - (a) is in violation of a law, or a rule or regulation issued under the law, or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
 - (b) is fraudulent or criminal; or
 - (c) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

A. EM's Employment Contract

In order to determine whether EM's employment was "wrongfully" terminated, we must first examine his employment status with the university. Here, EM was first hired as "Director of Player Development for Men's Basketball" pursuant to an Employment Contract with Rutgers. The Contract was for a specific term, first commencing June 14, 2010 and ending June 30, 2011. EM signed the Contract, as did AD Perneti on behalf of Rutgers. The Contract appears to be a standard contract between Rutgers and EM and it governed the terms of EM's employment.

On June 30, 2011, the first Contract terminated automatically by its own terms and EM's employment under that Contract also terminated as of that date. Thereafter, EM and Rutgers entered into a new one (1) -year Employment Contract that was effective on July 1, 2011. The Contract further expressly stated that it "terminated on June 30, 2012 without

further notice to the Administrator, subject to the terms set forth in this contract and subject to the extension as provided hereafter.” Id. ¶II. Thus, unless the Contract were extended, it would terminate automatically.

Section III of EM’s Contract with Rutgers provided for a possible one (1)-year extension, but only if certain criteria were met:

- A. This contract may be extended for an additional one-year (12 month) term **solely upon an offer by Rutgers and acceptance by the Administrator both of which must be in writing signed by the parties.** The University shall notify the Administrator in writing at least thirty (30) days prior to the conclusion of the current term whether it will offer to extend this contract. A University offer to extend may contain changes in the terms of this contract. The failure of the University to notify the Administrator whether it will offer to extend this contract at least thirty (30) days prior to the conclusion of the current term shall not result in the automatic renewal or extension of this contract. Rather, if the University does not provide timely notice whether it will offer to extend this contract, it is understood and agreed that the term of this contract will be extended for a period of thirty (30) days beyond the date on which the University informs the Administrator whether it will offer to extend the contract, and **in no event will an extension run more than (30) days beyond the termination date of the contract unless Rutgers has offered and the Administrator has accepted such an extension.**
- B. The Administrator understands and agrees that the University shall have the sole discretion to decide whether to extend this Contract. **The Administrator further understands and agrees that this Section III does not vest the Administrator with any expectation, right or entitlement to the renewal or extension of this contract (except for the 30 days extension in the event of untimely notice as provided for in Section III. A).** (Emphasis supplied).

B. EM’s Duties

Although EM saw his duties as being narrow, EM’s contractual duties as an Administrator within the Rutgers Men’s Basketball program were quite broad. They

included “assist[ing] the Head Coach of Men’s Basketball in the management, operation and supervision” of the program as set forth in his job description, and “any other duties as may be assigned by the Head Coach, the [Athletic] Director or the Director’s designee.” See Contract, Section VA. EM’s position was “a full-time twelve month position” that required EM to “devote full-time attention and energy to the duties of Administrator,” and to “avoid any business or professional activities or other pursuits that would interfere with the performance of the duties of Administrator.”

Similarly, the job description for the “Director of Player Development for Men’s Basketball Program” stated that the Director would, under the direction of the head coach, “be in charge of community and alumni relationships and keeping those relationships strong,” and that he would perform additional unspecified duties “as required.” Those duties were to be performed “with the highest standard of professionalism and ethical behavior....”

C. EM’S Abandonment of His Assigned Duties in Violation of a Direct Order of Coach Rice

Coach Rice’s contract with Rutgers required that he direct certain basketball camps at Rutgers in order to enhance Rutgers’ relationship with the community. Such public relations were seen by Rutgers as enhancing its overall reputation. To that end, Coach Rice’s “skills” camp, which he organized under his private company, was to take place from Monday, June 25, 2012 through Thursday, June 28, 2012. Several members of the Rutgers men’s basketball program staff, including EM, were designated by Coach Rice to assist in this camp and their assistance was considered part of the general duties outlined in each staff member’s contract with Rutgers.

On or about June 22, 2012, the Friday before the camp began, Coach Rice convened a meeting among the basketball staff to coordinate the roles that each staff member would play each day during the four (4) days of the camp. Among the attendees was EM. During the meeting, Coach Rice expressed the urgency to all of the staff members to work hard to make the camp a success. EM was designated to be a “commissioner” As such, it was to be EM’s responsibility to supervise all activities for one of the groups attending the camp.

Despite Coach Rice’s admonition during the organizational meeting that everyone was needed to assist at the camp, EM requested to be excused from his duties on Tuesday, June 26, 2010 in order to speak at a separate summer basketball camp. That camp was being held in Bridgewater, New Jersey. EM did not disclose at the time why he wanted to attend the camp instead of performing the duties required of him at the Coach Rice camp.

When EM first raised the possibility of wanting to attend another basketball camp rather than to perform his duties at the Coach Rice camp, Coach Rice attempted to deal with it in a light, but firm manner. He advised EM that he could not attend the camp in Bridgewater. After EM then raised the issue again, Coach Rice reminded EM that attendance at the Coach Rice camp caused inconvenience to all of the coaches and that it would not be fair to the others to excuse EM from performing his obligations at the camp. Accordingly, Coach Rice clearly instructed EM that he could not be excused to attend the other camp.⁹

⁹ EM claimed in his interview that Coach Rice did not expressly tell him not to attend the other camp, but he conceded that Coach Rice made it clear to him that Coach Rice did not want him to go to the other camp. Specifically, EM admitted that Coach Rice became very upset when EM first mentioned wanting to attend the other camp. In addition to his interview, we obtained a copy of an audio recording of EM, during which EM expressly admits he “disobeyed” Coach Rice by leaving the Coach Rice camp.

On Tuesday, June 26, 2012, EM directly disobeyed Coach Rice's clear directive. EM left the Coach Rice basketball camp that morning in order to attend the basketball camp in Bridgewater where his son was one of the campers. EM did not advise Coach Rice beforehand that he was abandoning his duties at the camp. Coach Rice learned of the absence only after he visited the site where EM was to be working and found that EM was absent. Coach Rice then contacted EM by telephone and confirmed EM's unauthorized absence. At that point, Coach Rice told EM to go home and stated that they would meet the following Monday to discuss the matter. EM claims that Coach Rice "fired" EM during that telephone call, but as set forth below, the other evidence we have obtained appears to undercut that claim. In either case, however, based on the statements they made to us during their interviews, both Coach Rice and EM agree that the action taken by Coach Rice was precipitated, not by any "whistleblowing" activity, but by EM's insubordination in leaving the Coach Rice camp when Coach Rice had made it clear to him that he was not authorized to do so.

Thereafter, EM contacted David Cox, the Rutgers Associate Head Coach. Coach Cox told EM that he should return to the Coach Rice camp that day and that Coach Rice would probably calm down over the insubordination issue after some time had passed. EM returned to the Coach Rice camp late in the day. At that point, Coach Rice directed Josh Loeffler, the Rutgers Director of Basketball Operations who also was in charge of directing the Coach Rice camp, to tell EM to leave the premises immediately. Coach Rice, who was upset that EM had violated Coach Rice's prior instruction, determined that he did not want there to be any dispute in front of the campers. Instead, he would meet with EM the following Monday to discuss the matter in detail.

Coach Rice and Josh Loeffler both deny that EM was fired. Both Coach Rice and Josh Loeffler also agree that Coach Rice did not tell Josh Loeffler to fire EM and Josh Loeffler is clear that at no time did he ever communicate to EM that he was fired. On the contrary, a flurry of email exchanges between EM and Coach Rice on or about Tuesday, June 26, 2012 appears to make it clear that Coach Rice had not expressly or impliedly terminated EM's employment. In those text messages Coach Rice asked EM to leave the camp and repeatedly advised EM that they would meet at Rutgers on Monday, July 2, 2012 to discuss the matter in detail.

Unfortunately, EM was not satisfied with Coach Rice's desire to defer the matter until after the Coach Rice camp had been concluded. Thus, on Wednesday, June 27, 2012, he sent a text message to Coach Rice, effectively demanding that Coach Rice tell him immediately whether EM was going to be fired. The text stated, "I cant (sic) wait til Monday. This shit is stressing me out and I wanna get it off my chest. What's going to change from now to Monday. If Im fired don't need to wait til Monday." (Emphasis Supplied). Coach Rice again responded that they would meet the following Monday. He made no reference to firing EM.

On the morning of Friday, June 29, 2012, Coach Rice called EM to advise him when they would meet that next Monday. EM became heated during the call when Coach Rice repeatedly told EM that they could discuss EM's concerns at the meeting on Monday. EM then began calling Coach Rice names, apparently attempting to provoke Coach Rice to fire

him. Nevertheless, Coach Rice persisted in stating that they would address the matter when they met the next week.¹⁰

Later in the day on June 29, 2012, EM appeared unannounced in the Rutgers basketball offices. He was accompanied by his girlfriend. During this appearance, EM made numerous comments. Unknown to EM, one of the assistant coaches was recording EM's comments. We were provided with a copy of that audio recording to assist us in our investigation.

EM advised Associate Head Basketball Coach David Cox that he, EM, was there to pick up his belongings. EM also stated that he had not resigned, but had been "fired" for leaving the Coach Rice basketball camp held at Rutgers earlier in the week, and he said the firing had actually been done by Josh Loeffler. EM asserted that he was no longer employed by Rutgers. During this same visit, EM vocally lodged several criticisms of Coach Rice and flagrantly attacked Coach Rice's character. EM stated that EM knew more about basketball than Coach Rice because EM had been a professional basketball player for several years. He also referred to Coach Rice as a "greedy f'ing pig" (expletive deleted). Coach Rice was in his nearby office when EM was making his remarks. The door to Coach Rice's office was closed and Coach Rice did not seek to confront EM. Ultimately, EM left the Rutgers basketball offices with his girlfriend.

Shortly thereafter, AD Perneti appeared in the basketball offices and asked what had happened. After receiving an explanation, AD Perneti contacted EM by telephone. During the conversation, EM claimed that he was "fired." In response, AD Perneti

¹⁰ EM denies that he spoke with Coach Rice that morning of June 29, 2012. Coach Rice, however, produced a copy of cell phone records confirming that he had calls with EM on Tuesday, June 26, 2012, and on the morning of Friday, June 29, 2012.

advised EM that only he, as Rutgers Athletic Director, had the authority to fire people and that he had not authorized anyone to fire EM. Accordingly, he expressly told EM that he was not fired. Multiple persons witnessed AD Perneti making these statements to EM. During that same telephone call, AD Perneti directed EM to come to Rutgers on Monday, July 2, 2012 to meet with Coach Rice. AD Perneti assured EM that if he and Coach Rice could not work through this situation, AD Perneti himself would take care of it. Interestingly, EM conceded during his interview that, if he had wanted to, he could have continued to be employed at Rutgers. This appeared to confirm that, as of June 29, 2012, EM knew he had not been fired.

Unfortunately, EM failed to attend the Monday meeting. He also failed to contact either AD Perneti or Coach Rice to arrange to attend any such meeting. As a result, AD Perneti determined that he, on behalf of Rutgers, would honor the terms of EM's expiring contract with the University, but he would not attempt to negotiate any new contract with EM. This decision was precipitated by EM's failure to appear and his apparent voluntary decision to leave his position with Rutgers. There is no evidence to suggest that this decision was in any way retaliation for EM complaining about Coach Rice mistreating players. In fact, AD Perneti himself was upset with certain of Coach Rice's behavior in February and March 2012 and AD Perneti had met with Coach Rice at the time and cautioned him that singling out a player for punishment, or mistreatment of players, would not be tolerated in the future.¹¹

¹¹ In his July 11, 2012 correspondence, EM's counsel alleged that Coach Rice failed to adhere to New Jersey's wage and hour law. We interviewed EM on this issue. He asserted that this claim was based on his work at the Coach Rice basketball camps. EM stated that he was paid in full for his work at the camps in 2012, but that he was only partially paid for his work in 2011. Upon further inquiry, EM was equivocal, stating that he may have been paid for his work at the

D. New Jersey's CEPA Statute and Rutgers' Corresponding Policy As Applied to These Facts

In order to take advantage of the CEPA statute or Rutgers' Policy 60.1.16, the Complainant first must either expressly object to his employer's misconduct, or he must refuse to participate in such illicit activity. In other words, neither the CEPA statute nor the corresponding Rutgers' Policy is violated unless (1) the employee engages in "protected" activity, and (2) the employer retaliates against the employee because of that activity. Applying the applicable legal definition to these facts, and for the reasons set forth below, it does not appear that Coach Rice, AD Perneti or Rutgers retaliated against EM.

Pursuant to his Employment Agreement with Rutgers, Coach Rice had no authority to hire any individual to work with the Rutgers basketball program. Instead, the authority to hire and fire employees in the Rutgers basketball program belonged exclusively to the Rutgers Athletic Director, Mr. Perneti. Coach Rice's authority was limited to making recommendations to AD Perneti.

In his interview, Josh Loeffler confirmed that he neither expressly nor impliedly communicated to EM that EM's employment at Rutgers was being terminated despite his direct failure to obey Coach Rice. Similarly, Coach Rice denies that he fired EM. Instead, in one telephone call and in several text messages exchanged between Coach Rice and EM, Coach Rice directed that EM appear at Rutgers for a meeting to discuss the matter. The meeting would take place on Monday, July 2, 2012, but the time for the meeting was not yet

camps in the first year, but he did not recall being paid. He offered no documentation or other corroborating information on this issue. We ultimately obtained documents for Coach Rice's camps. They reflected that EM was paid \$1,550 in 2011 for his work. Based on that documentation, we have no evidence of any New Jersey wage and hour violation. We also have no evidence that EM reported any such violation to Rutgers or, if so, that it played any role in his separation from Rutgers in 2012.

specified. The related text messages between EM and Coach Rice appear to confirm that EM had not been fired, but that EM was trying to find out in advance of the meeting whether Coach Rice intended to fire him. At no time during these text messages did Coach Rice terminate EM's employment, nor did he have the authority to fire EM.

Even were we to assume that Coach Rice had stated "you're fired" to EM on Tuesday, June 26, 2012, EM's subsequent telephone discussion with AD Perneti made it abundantly clear that EM was not fired. First, AD Perneti expressly told EM that he was not fired as of that date. Second, he advised EM that Coach Rice had no authority to fire EM without AD Perneti's permission and AD Perneti had not given any permission to anyone to fire EM.

More importantly, however, whether EM was "fired" or simply not given a new contract after the existing contract expired, there is absolutely no evidence to support attorney Kozyra's naked claim that EM was fired for disclosing, or for refusing to participate in, improper conduct of Coach Rice. On the contrary, when interviewed, EM stated that his "firing" was directly linked to EM leaving the Coach Rice camp without permission and that Coach Rice "fired" him immediately upon learning of EM's unauthorized absence from the camp. Thus, accepting EM's version of the facts, EM was not "fired" for "whistle-blowing" activity, but for his insubordination with respect to the Coach Rice camp. This conclusion is further supported by EM himself in the recorded statements he made to David Cox. EM admitted that he "disobeyed" Coach Rice and that he was being let go due to his insubordination. EM also tacitly admitted that his "firing" had nothing to do with his "blowing the whistle" on Coach Rice's alleged misconduct.

Instead, EM told David Cox that, “we all have bitten our tongues,” and he further confessed that “I didn’t say anything [about Coach Rice’s alleged misconduct].”

The claim by EM’s lawyer that EM was fired based on his objections to Coach Rice’s misconduct is also undercut by EM’s interview. EM stated that he spoke with David Cox about Coach Rice’s negative treatment of certain players, and they both raised the issue with Coach Rice during coaches’ meetings. EM observed that Coach Rice would affirmatively respond thereafter by trying to be more positive with the player, but that the improvement in Coach Rice’s behavior would be only temporary. At no time were EM or David Cox fired for raising these issues with Coach Rice and EM told us that he believed he could have continued his employment at Rutgers had he chosen to do so.

Our finding of no improper retaliation is further supported by our interview of Brad Wachtel, who serves as the Assistant to the Head Coach. Mr. Wachtel related that he was disturbed by some of the actions of Coach Rice that he had observed at practice. Specifically, Coach Rice had called the players “faggots” or a similar derogatory term. Mr. Wachtel spoke to Coach Rice thereafter and told him that Coach Rice could “never” use that slang term again. Coach Rice did not fire Mr. Wachtel, he did not retaliate against him and, to Brad Wachtel’s knowledge, Coach Rice heeded Mr. Wachtel’s admonition: Coach Rice did not thereafter use that improper term again.

E. Recommendations

In weighing the evidence, the investigators conclude that Coach Rice did not terminate EM’s employment. First, as set forth in Coach Rice’s contract with Rutgers, Coach Rice had no authority to do so. The authority to terminate EM’s employment rested solely with AD Perneti. Here, AD Perneti determined that he would not terminate EM’s

Employment Contract. Instead, he directed that EM be paid all amounts due him under the terms of EM's Employment Contract, even though EM did not report for work after Friday, June 29, 2012, and even though EM had directly violated directives of Coach Rice and AD Perneti when he failed to appear for a meeting as AD Perneti had directed.

Second, EM acknowledges that AD Perneti expressly told him on June 29, 2012, that EM was "not fired." Thereafter, despite EM's failure to appear at work, he was paid all sums due under his Employment Contract with Rutgers. The claim by EM's attorney that his client was wrongfully terminated thus has no merit.

EM's employment at Rutgers was based solely on a one (1)-year contract with Rutgers that expired on June 30, 2012. Thus, as of that date, Rutgers' employment of EM was to end as the parties had contractually agreed. Pursuant to his one (1)-year employment agreement with Rutgers, EM was entitled to a single 30-day extension from the date he was first notified in writing that his contract was not being renewed. EM had no further contractual obligations to Rutgers and Rutgers had no further contractual obligations to EM beyond the terms of the parties' employment agreement.

Although couched in different terms, EM's actual complaint is not for wrongful termination, but for AD Perneti's decision not to offer EM a new contract. AD Perneti's decision not to offer a new contract to EM was based on EM's abandonment of his employment and his direct and deliberate insubordination, and was not based on any

impermissible or retaliatory reason. Therefore, there was no violation of Rutgers' CEPA policy.

CONNELL FOLEY LLP

By _____
JOHN P. LACEY

Dated: January 21, 2013

APPENDIX

During the course of our investigation, we conducted 29 interviews of the witnesses listed below, which include multiple follow-up interviews of certain of those individuals. Additionally, we reviewed the materials listed below.

Witness Interviews

Coaching Staff

Coach Rice (x2)
Dave Cox (x2)
Van Macon (x2)
Jim Martelli (x2)
Daniel Corky McMullen (x2)
Josh Loeffler (x2)
Brad Wachtell (x2)

AD Department / Other Rutgers Employees

AD Perneti (x3)
Janine Purcaro
Nicholas Ojea
Charlie Maher

Players

IDENTITIES REDACTED

Other

EM

Documents/Materials Reviewed

1. Coach Michael Rice

- a. Rutgers Personnel File for Coach Michael Rice
 - i. Memorandum of Agreement between Coach Rice and Rutgers dated May 6, 2010;
 - ii. Employment Contract between Coach Rice and Rutgers effective May 6, 2010;
 - iii. Miscellaneous Records Relating to Coach Rice
- b. AD Perneti's Notes Regarding Meetings with Coach Rice
 - i. 2/6/12: Rice Discussion/Louisville Ejection
 - ii. 3/15/12: **IDENTITY REDACTED**
 - iii. 3/19/12: **IDENTITY REDACTED** Mtg w/ Rice
 - iv. 7/17/12: Murdock Letter & Rice Response
- c. November 27, 2012 Memorandum from Tim Perneti to Michael Rice advising that he is conducting investigation;
- d. Rice Assessment by Sports Psychologist
- e. Miscellaneous Documents Relating to Coach Rice

2. EM

- a. Rutgers Personnel File for EM
 - i. EM's 2010-2011 Employment Contract
 - ii. EM's 2011-2012 Employment Contract
 - b. JD (Job Description) and CARF (Classification & Recruitment Form) for the position of Director of Player Development for Men's Basketball.
 - c. Written statement of Assistant Coach David Cox regarding EM;
 - d. Written statement of Brad Wachtel regarding EM;
 - e. Records of payments made to EM by Rutgers under the employment agreement he entered with Rutgers for the one (1)-year period ending June 30, 2012;
- 3. Coach Rice's "Timeline" of events leading to the decision not to renew the expiring contract of Eric Murdock dated June 25, 2012;**
- 4. Copies of six printed pages of text messages allegedly exchanged between Coach Rice and EM beginning on June 14, 2012 and ending on or about June 27, 2012;**
- 5. Copies of newspaper accounts relating to Coach Rice;**
- 6. Audio recording made by a Rutgers assistant coach reflecting statements of EM on June 29, 2012**
- 7. Video Recordings**
- a. Kozyra DVD containing edited and undated video clips of practices of the Rutgers basketball team
 - b. Video of Rutgers vs. Louisville basketball game on 2/4/12;
 - c. "Physical" tapes of 2010-2011 and 2011-2012. Practice videos of 9/11/10, 10/16/10, 10/29/10, 10/31/10, 11/5/10, 11/9/10, 11/14/10, 11/17/10, 12/12/10, 12/16/10, 1/10/11, 1/14/11, 2/8/11, 9/2/11, 9/3/11, 9/7/11, 9/8/11, 9/16/11, 11/1/11, 1/6/12, 1/9/12, 1/18/12, 1/24/12, 2/21/12.
 - d. "Throw and Kick" tapes of 2010-2011 and 2011-2012; Practice videos of 9/4/10, 9/7/10, 9/11/10, 10/8/10, 10/13/10, 10/16/10, 10/25/10, 11/2/10, 11/18/10, 12/9/10, 12/6/10, 12/26/10, 1/14/11, 9/29/11, 11/8/11, 11/19/11, 12/27/11, 1/9/12, 1/18/12, 2/10/12.
 - e. "Positive Edits" video supplied by Corky McMullen.
 - f. Copy of Rutgers' July 31, 2012 and August 2, 2012 responses to Open Public Records Act requests submitted by Barry Kozyra, Esq., in July 11, 2012 letter (only portions of all DVD's were reviewed);
 - g. Complete videos of practices not held at Rutgers Athletic Center.

8. Rutgers University Policies

- a. Policy Prohibiting Discrimination and Harassment (60.1.12)
- b. Workplace Violence Policy (60.1.13)
- c. Conscientious Employee Protection Policy (60.1.16)
- d. Policy Against Verbal Assault, Harassment, Intimidation, Bullying and Defamation (Student Code of Conduct)

9. Correspondence between EM's attorney and Rutgers

- a. July 11, 2012 letter from Barry Kozyra, Esq. to Rutgers;
- b. July 19, 2012 letter from Rutgers outside counsel, John K. Bennett, Esq., to Barry Kozyra, Esq. in response to Mr. Kozyra's July 11, 2012 letter;
- c. September 26, 2012 letter from Barry Kozyra, Esq., to John K. Bennett, Esq.;
- d. November 27, 2012 letter from Richard J. Cino, Esq. responding to Mr. Kozyra's September 26, 2012 letter and agreeing to a meeting to allow Mr. Kozyra to produce evidence;
- e. November 29, 2012 letter from Mr. Kozyra to Richard J. Cino, Esq.

10. Income Tax Return from Coach Rice Basketball Camps and related materials;

11. NCAA Violations

- a. Copy of documents forwarded by Rutgers to NCAA on July 24, 2012, self-reporting secondary violation;
- b. Copy of documents forwarded by Rutgers to Big East Conference in August 2012, reporting violation concerning EM