

# CU-Boulder moves to fire professor accused of retaliating against sexual assault victim

Graduate student received \$825,000 in settlement finalized this week

By Sarah Kuta, Camera Staff Writer

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A photo of David Barnett, a University of Colorado associate professor, is seen Thursday on the wall of the philosophy department in the Hellems building on the Boulder campus. CU officials have moved to fire Barnett for allegedly retaliating against a woman who reported she was sexually assaulted by a fellow student. (David R. Jennings / Daily Camera)

The University of Colorado is moving to fire a tenured faculty member after the Boulder campus paid \$825,000 this week to settle a graduate student's allegations that the philosophy professor retaliated against her for reporting she was sexually assaulted by a fellow student.

Chancellor Phil DiStefano recently issued a notice of intent to dismiss associate professor David Barnett, campus spokesman Ryan Huff confirmed to the Daily Camera.

If fired, Barnett would be only the [fourth tenured professor ever dismissed](http://www.dailycamera.com/News/ci_26294597) ([http://www.dailycamera.com/News/ci\\_26294597](http://www.dailycamera.com/News/ci_26294597)) by the university in its 138-year history.

Barnett is accused of compiling a 38-page report painting the victim as "sexually promiscuous" and alleging she falsified the report of the assault, according to a notice of intent to sue CU filed by the victim last month.

The move to fire Barnett, who has taught in the philosophy department since 2005, comes as CU already was **under federal investigation for possible violations of Title IX** ([http://www.dailycamera.com/cu-news/ci\\_23726450](http://www.dailycamera.com/cu-news/ci_23726450)), the federal gender-equity law. It also comes six months after a **scathing report detailed sexual harassment, bullying and other unprofessional conduct**

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([http://www.dailycamera.com/ci\\_25035043](http://www.dailycamera.com/ci_25035043)) within the philosophy department.

Barnett, 44, declined to comment for this story.

But Brian Moore, Barnett's Denver-based attorney, said that in its treatment of Barnett, CU is "holding up his scalp" to show the rest of the philosophy department the university's tough stance on behaviors described in the January report by the American Philosophical Association Committee on the Status of Women Site Visit Program .

Barnett will fight his firing under claims the university violated his First Amendment right to free speech and the Colorado statute that protects whistleblowers, Moore said.

"Every male member of the CU philosophy department already has had his reputation damaged as a result of the

administration's selective release of information," Moore said. "Now, even though professor Barnett is not accused of harassing anyone, the administration is attempting to make him the scapegoat."

CU's Huff said the American Philosophical Association report was commissioned because of "longstanding problems" within the philosophy department, and separately from the events that led to Barnett's dismissal.

"While the events underlying the settlement did not precipitate the APA site visit, they are examples of the behavior that we are working to eradicate from the philosophy department and elsewhere on campus," Huff said.

### **CU harassment investigation**

According to the notice of claim obtained by the Daily Camera, a female graduate student described being sexually assaulted by a male philosophy doctoral student at an off-campus party in August 2012.

Such notices of claim must be filed in advance of suing Colorado public institutions. In this case, CU settled before any lawsuit was filed.

The Camera is neither identifying the woman, because she is the victim of sexual assault, nor the alleged assailant, because he wasn't arrested.

While the case was referred by CU to Boulder police, it was closed without any arrests, according to a police report.

At some point after the alleged sexual assault, the male doctoral student, who is in his mid-30s, finished his studies and was hired by the university as an instructor. The university was not aware of the alleged incident at the time he was hired, Huff said.

In late October 2012, the victim, who is in her late 20s, reported the assault to CU's Office of Discrimination and Harassment.

While such proceedings and their results are confidential, the victim's notice of claim and a Boulder Police Department report show that the investigation found the male student violated the university's sexual harassment policy.

He was suspended from his position as an instructor during the course of the investigation, according to the police report. The university later decided not to renew his instructor contract, Huff said.

After the Office of Discrimination and Harassment concluded its case, Barnett launched his own investigation into the woman's reported sexual assault, according to the victim's notice of claim, which was filed with the Colorado Attorney General's Office on July 3.

According to the notice of claim, Barnett had discussions with university faculty members and students about the victim's sexual history, marital relationship and her sexual behavior on the night of the alleged sexual assault.

The document also said that Barnett told faculty members, university administrators and students that the victim was "sexually promiscuous" and that she falsified the report of the assault. Barnett, the document alleged, wrote that the victim fabricated the sexual assault to cover up the fact that

([/portlet/article/html/imageDisplay.jspx?contentItemRelationshipId=6148701](http://portlet/article/html/imageDisplay.jspx?contentItemRelationshipId=6148701))  
University of Colorado associate philosophy professor David Barnett (University of Colorado)

she was cheating on her boyfriend.

Barnett wrote a 38-page report about the victim and sent it to the university, according to the notice of claim.

After receiving that report, the university hired Denver attorney David Fine to conduct an independent investigation into the matter, Huff said. The university will pay Fine \$148,589.15 for that work, Huff said.

CU declined to provide the Camera with the results of Fine's investigation, citing confidentiality around matters involving sexual harassment. For the same reason, the university also refused the Camera's request for the 38-page report written by Barnett.

The victim, who declined to speak with the Camera, filed the complaint because Barnett "smeared her reputation" and she wanted to prevent something similar from happening to future victims who report sexual misconduct, her attorney, Debra Katz, said.

"She felt it was very important to bring that issue to the attention of the appropriate parties within the university and not only protect her own rights, but to ensure that other people who come forward and report serious Title IX violations are not retaliated against," Katz said.

Katz said that if the university tolerated retaliation, it would have a "chilling effect" on anyone wishing to come forward to report a violation.

She added that while her client did not ask for Barnett to be dismissed, the decision sends a "very strong message" that the university is serious about disciplining people who violate Title IX.

While not speaking about the allegations against Barnett specifically, Huff said it's important for investigations into possible university policy violations to be conducted by professionals.

"We have established mechanisms with trained professionals who are in charge of conducting investigations," he said. "Having non-trained, non-professional people conducting unauthorized investigations is not appropriate."

#### **'Cloak of secrecy'**

Barnett, however, said through his attorney that he never investigated the victim or her sexual assault, but rather wanted to look into the Office of Discrimination and Harassment's handling of the case.

In his report, which Barnett sent only to DiStefano and CU President Bruce Benson, according to his attorney, Barnett described how the Office of Discrimination and Harassment's investigation mischaracterized or excluded information from witnesses.

Moore, Barnett's lawyer, said his client included sworn statements by nearly all of the third-party witnesses cited in the Office of Discrimination and Harassment investigation.

"In speaking with these witnesses and hearing their concerns about the way their testimony had been summarized by ODH, professor Barnett became convinced that ODH had intentionally and systematically manipulated the evidence in order to support a finding of guilt," Moore said.

"Because ODH operates under a cloak of secrecy and without due process, professor Barnett was concerned that this likely was not an isolated incident and felt ethically obligated to do what he could to stop this abuse of authority, and hopefully in the process correct what he views as a miscarriage of justice against his former student."

Huff, CU's spokesman, defended the Office of Discrimination and Harassment and the university, saying that at every juncture, the campus has been fair and has followed policy and procedure.

"At all points, ODH has acted appropriately," Huff said. "An independent review by attorney David Fine supports this."

Moore said Barnett was an unofficial mentor to the accused male instructor, and someone the instructor went to for advice about the profession. Moore added that Barnett took care not to harm the female graduate student's reputation in the course of his probe.

Moore acknowledged that rumors about the victim were circulating in the department, but said those rumors were not started by his client.

Barnett's decision to inform the university of what he saw as an "abuse of power by ODH" and his defense of a student are protected by his constitutional right to free speech and by Colorado whistleblower laws. Moore said.

"We understand the importance of protecting the rights of students and others who come forward to report sexual harassment, regardless of whether or not their allegations are ultimately substantiated," Moore said. "However, it is no violation of those rights to urge that the accused not be convicted of a serious offense in the absence of sufficient evidence."

### **'A commitment to enforcing the law'**

Though she did not go through with a lawsuit, the victim's lawyers wrote that damages caused by Barnett's behavior such as emotional pain and suffering, depression, anxiety and suicidal ideation, damage to educational career and reputational harm, among others, would total \$2 million.

The university's settlement of \$825,000 with the victim was finalized Tuesday.

Of that money, the victim received \$520,000 and her attorneys at Washington, D.C.-based firm Katz, Marshall and Banks received \$305,000. The settlement does not constitute an admission of liability or fault on the part of the university.

In the settlement document, the victim alleges that Barnett "unlawfully retaliated" against her in violation of Title IX, the federal gender equity law that prohibits discrimination on the basis of sex.

Under the law, which also protects students from retaliation, gender discrimination includes sexual assault and sexual harassment.

This most recent payout follows a **\$32,500 settlement CU reached with Sarah Gilchriese** ([http://www.dailycamera.com/cu-news/ci\\_25733222](http://www.dailycamera.com/cu-news/ci_25733222)) — who has agreed to be identified publicly — in May.

Gilchriese sparked a federal investigation of CU last year after filing a complaint with the U.S. Department of Education alleging the university violated Title IX in its handling of her sexual assault.

In 2007, the university settled a Title IX lawsuit and paid \$2.5 million to Lisa Simpson and \$350,000 to Anne Gilmore, who alleged that they were raped at a party attended by CU football players. The Camera has named Simpson and Gilmore because they sued the university.

In the current case, the victim has been admitted to CU's philosophy doctoral program and intends to remain on the Boulder campus, DiStefano said.

In a statement about the settlement, DiStefano wrote that he's "very pleased" the victim chose to stay at CU.

"We must honor her trust by ensuring not only that she has every opportunity to succeed, but also by taking the steps that will enable every student to thrive in a community free from discrimination and harassment," he wrote. "This settlement is part of our ongoing, intense effort to combat gender discrimination and sexual harassment across the campus."

Though the federal investigation is ongoing, DiStefano also commissioned an independent review of the university's Title IX policies and procedures. That review found the university to be compliant with federal law, and recommended that the campus hire an additional Title IX coordinator for campus-wide oversight.

### **CU announced in June that it had hired Valerie Simons**

([http://www.dailycamera.com/cu-news/ci\\_25934379](http://www.dailycamera.com/cu-news/ci_25934379)), a former federal civil rights attorney, for that post. She began work at CU on July 22.

### **'Responsible leadership' at CU**

As colleges and universities across the country grapple with how to make their campuses as safe and welcoming as possible, CU has said it wants to be a leader among its peers in addressing sexual harassment and gender discrimination.

The victim's attorneys applauded CU's hiring of Simons in a statement, and wrote that CU demonstrated "responsible leadership" in the settlement and other "corrective" actions.

"We would not have recommended to our client that she continue her studies at CU-Boulder unless we believed that the university's commitment was both sincere and meaningful," attorneys Lisa Banks and Debra Katz wrote.

In an interview with the Camera, Katz said she was particularly impressed by the university's hiring of Simon, who has a "great reputation" in the civil rights community.

She said it's unusual for a university to handle a situation involving Title IX violations so swiftly and so thoroughly. She pointed to the White House's recent recommendations for handling and preventing sexual assault and sexual harassment on college campuses. The U.S. Department of Education also made public this year the list of campuses being investigated by its office for potential Title IX violations, a list that included CU's Boulder and Denver campuses.

"Fortunately, we're starting to see the universities heed that warning and we think there's been a significant change, and certainly that's what the University of Colorado's actions reflect here," Katz said. "It's not only a commitment to enforcing the law, but to be better."

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Here's hoping Barnett gets at least a couple of million in his wrongful termination suit against the university.

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Brian "The Bulldog" Moore? I've seen his goofy ads during commercial breaks for my guilty pleasure TV shows.

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This is hardly the first time the ODH and its clandestine methods have come under suspicion. While I understand the need to protect the privacy of those bringing complaints, it is disturbing that there is no real independent check on what happens there. Careers can be destroyed (and have been) by their findings, the university apparently reserves the right to release information selectively from the ODH (see the surprise public release of the site visit report), presumably to exert pressure on those it deems deserving, but if a well-liked professor, concerned about the career assassination of one of his students, questions their methods he is dismissed? If the university cares at all about due process they will invite an independent commission to investigate the ODH and its methods.

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Whew, whadda mess--and just the latest in a seemingly unending cascade of mess at good ol' Sleaze U.


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What a poisonous thing secrecy becomes. How can anyone really know what happened and who is really guilty in all of this?

A non-judicial process operating in secrecy and without the presumption of innocence, all employment matters kept confidential, eight hundred thousand dollar payouts--where does it end? At least the lawyers are getting rich.


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I love Left on Left crime.

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"But Brian Moore, Barnett's Denver-based attorney, said that in its treatment of Barnett, CU is "holding up his scalp"...


Looking at his picture, I'd say someone beat them to it.

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I love how everyone here acts like they have a right to know private details. This was the firing of a guy who meddled into the HR/legal issue between two \_other\_ people. This had \_nothing\_ to do with the other kid who got let go. If he has a case, he can sue and present his case. This is about a putting the University into huge exposure and being let go for doing it.

Barnett wasn't an objective and he wasn't tasked with doing it. There are state guidelines for whistleblowers and either he ignored them or didn't qualify and instead went this way, which legally exposed the university. Regardless of whether or not his report was 100% correct, he caused huge liability for his employer. In every other place of employment except maybe government, you'd be out on your ass.

I hope you understand as taxpayers in CO that by CU doing this, the right thing, they saved us a 7-8 figure lawsuit that CU would have lost.

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I wonder if Barnett's behavior had any influence on the eventual outcome of the case, to the end that the male student was not arrested or prosecuted, or if he just threw away his career pointlessly with his meddling.

I'm sure he was concerned about his protégée's future, that the guy might be railroaded by an overzealous ODH. At that point in the process, it simply wasn't his problem or his business. What would've been appropriate would be for him to volunteer as a character witness if the male grad student was prosecuted, dismissed from the University, or sued by the victim. He could've (and **should've**) left any investigation into the victim's character to the alleged harasser's attorney. If the alleged harasser gets expelled despite not being arrested or prosecuted, then he could sue the University for wrongful expulsion and his attorney could then put together a report on the victim, on ODH, and whatever else, leaving the philosophy department uncontaminated by this sort of dirty meddling in the investigation.

Trying to discredit the victim's account by basically calling her a dirty sl\*t, if that's indeed what his "report" was all about, was about the stupidest thing he could've possibly done in this situation and likely exacerbated the situation so much that it damaged the career of the very guy he was trying to help.

When in doubt, it generally is best to sit on one's hands and hope the process works, and stand-up and speak-out if it clearly is not working properly and an injustice is actually present and requires remediation.

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What a thorough, well written and balanced article by Sarah. There may be hope for the Camera yet!

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\$150K to an attorney in Denver, \$300K to lawyers in DC, and \$520K for the "victim"

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Oh what a tangled web we weave.

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Make that 30-odd page report public. It sounds like it's most an indictment of the kangaroo court tactics of CU's harassment office.

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Seems to me CU has bigger problems than 420.

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I was about to write a check for the 821 fund for UCD scholarships.,Boy this came out at the right time. If they can waste that kind of money they don't need mine!

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[dancing\\_badger \(http://intensedebate.com/people/dancing\\_badger\)](http://intensedebate.com/people/dancing_badger) 127p · [18 weeks ago](#)

Hey CivilLibertarian,

Do you work for CU? Maybe the DC should start pulling IP addresses to see where you're posting from. They could interview you for their follow up story on this affair.

I would also point out that their web software probably uses number and frequency of posts along with page views when calculating page popularity. More posts means this story is pushed at more online readers.

And if they perform the next elementary step of deciding what topics to cover it should also suggest to them where to devote reporting resources.

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Kudos again to Sarah Kuta. Once again she demonstrates that she is the best investigative reporter the Daily Camera has on staff.

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[Laughriot \(http://intensedebate.com/people/Laughriot\)](http://intensedebate.com/people/Laughriot)

[Laughriot \(http://intensedebate.com/people/Laughriot\)](http://intensedebate.com/people/Laughriot) 109p · [18 weeks ago](#)

How would a CU professor come to know if a student is "sexually promiscuous" ?

Unless he knows first hand from having relations with her, he threw this out as Prima Facie IMHO.

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[clcboulder \(http://intensedebate.com/people/clcboulder\)](http://intensedebate.com/people/clcboulder) 60p · [18 weeks ago](#)

I know David Barnett and I stand by him 100%.

He is an honorable, thoughtful, caring man.

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<http://intensedebate.com/people/dickshaver>

[dickshaver \(http://intensedebate.com/people/dickshaver\)](http://intensedebate.com/people/dickshaver) -76p · 18 weeks ago

Sarah Kuta isn't going to last long at the Daily Camera. Her reporting is too good the this gossip rag. We'll see her at the Denver Post or a paper of much higher integrity soon. Great story. It felt like I was transported back 30 years, when reporters did their homework, and told the story without interjection of too much op ed or "editorial" direction. With that said, Sarah - you have no shot working for MSNBC or Fox news.

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<http://intensedebate.com/people/123longmt789>

[123longmt789 \(http://intensedebate.com/people/123longmt789\)](http://intensedebate.com/people/123longmt789) 96p · 18 weeks ago

How is that someone was the victim of a sexual assault yet the person accused of the assault was never charged or arrested?

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[3 replies](#) · active 18 weeks ago



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<http://intensedebate.com/people/StanBrown>

[montya \(http://intensedebate.com/people/StanBrown\)](http://intensedebate.com/people/StanBrown) 82p · 18 weeks ago

The university has learned some lessons from the past and acted appropriately this time. I only wish it did not cost so much to do so. Too bad Barnett, who will no doubt cost the university more in legal fees, did not have to cough up some of the settlement cost. His actions were clearly inappropriate. Whether he meant to retaliate or not, that is what it would appear to be in a court of law. It appears some of the faculty need more instructions on how to behave. Amazing to me that a tenured faculty member would have undertaken such actions on his own.

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[3 replies](#) · active 18 weeks ago



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<http://intensedebate.com/people/CtyZn>

[CtyZn \(http://intensedebate.com/people/CtyZn\)](http://intensedebate.com/people/CtyZn) 89p · 18 weeks ago

What seems unreasonable (and creepy) is some guy writing a 38 page manifesto and sending it out to colleagues. In what workplace would that behavior be okay? I hope the DC follows up with an article on the appropriate mechanism for inserting oneself in a HR issue at that workplace and what sort of mental health resources are available to CU employees. That is, what should the Prof have done? Doesn't the University have an ombudsman?

From the article, it does sound like CU caught an issue after it was brought to their attention, and it seems reasonable that the contract was not renewed:

"While the case was referred by CU to Boulder police, it was closed without any arrests, according to a police report."

"The university was not aware of the alleged incident at the time he was hired, Huff said."

"Boulder Police Department report show that the investigation found the male student violated the university's sexual harassment policy."

"the university later decided not to renew his instructor contract"

I concur that this is one of the better written stories that the DC has run in a while. Brava!


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[2 replies](#) · active 18 weeks ago



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 [exsobnat](http://intensedebate.com/people/exsobnat) (<http://intensedebate.com/people/exsobnat>) 92p · [18 weeks ago](#)

This whole issue sounds like a police problem. The crux seems to be why the situation made the rounds in the university system . The university seems to be having to cough dollars to avoid a drawn out litigation, which they would probably win, to defer expenses. A sad comment.

It seems like if the university had let the local authorities handle this off-campus problem, which it was, that it would have been handled under the city's jurisdiction. This case continues the precedent, that if someone accuses someone at a private party, weeks after the alleged crime, that the University has to step up and settle, to avoid the larger expenses. A sad comment.

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[3 replies](#) · *active 17 weeks ago*



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 [4ever49](http://intensedebate.com/people/4ever49) (<http://intensedebate.com/people/4ever49>) 79p · [17 weeks ago](#)

I would bet Barnett who several describe as very intelligent and caring went through a philosophical evaluation of the situation and determined it was OK to proceed with his investigation.

However, he missed the elephant in the room, it is not a philosophical matter; rather it is a criminal and way out of his league.

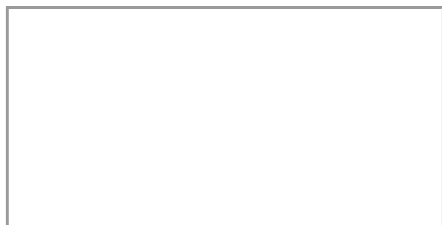
If he gets canned he brought it on himself.

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Article ID: 26294506

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## CU-Boulder moves to fire professor accused of retaliating against sexual assault victim

By Sarah Kuta , Camera  
Staff Writer

Updated: 08/07/2014  
10:24:09 PM MDT

DailyCamera.com

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- Nov 27:
  - AAUP wants member present at David Barnett closed-door dismissal hearing
- Nov 13:
  - Panel set to hear case against CU-Boulder prof David Barnett
- Nov 5:
  - CU-Boulder prof Alison Jaggar had concerns about retaliation more than a year ago
- Nov 3:
  - David Barnett, professor at center of termination battle, seeks \$2M from CU-Boulder

The University of Colorado is moving to fire a tenured faculty member after the Boulder campus paid \$825,000 this week to settle a graduate student's allegations that the philosophy professor retaliated against her for reporting she was sexually assaulted by a fellow student.

Chancellor Phil DiStefano recently issued a notice of intent to dismiss associate professor David Barnett, campus spokesman Ryan Huff confirmed to the Daily Camera.

If fired, Barnett would be only the **fourth tenured professor ever dismissed** by the university in its 138-