

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JANE DOE,

Plaintiff,

v.

MICHIGAN STATE UNIVERSITY;
MICHIGAN STATE UNIVERSITY BOARD
OF TRUSTEES; LOU ANNA SIMON in her
Individual and Official Capacities;

Defendants.

Hon. _____

Case No. _____

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COMPLAINT AND JURY DEMAND

Plaintiff, JANE DOE, by and through her attorneys, KAREN TRUSZKOWSKI and JULIE

A. JACOT, hereby files the following complaint against Defendants as captioned above.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and U.S. C. § 1343.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), because the events giving rise to this claim occurred in this judicial district, and because Defendants are located in this judicial district.

THE PARTIES

3. Plaintiff was, at all material times, a student at Michigan State University (“MSU”).
4. Michigan State University (“MSU”) is a public university receiving federal funds.
5. Defendant Michigan State University Board of Trustees (“MSU Board”) operates and governs MSU, a public university located in East Lansing, Michigan.
6. Defendant Lou Anna Simon (“Simon”) was, at all material times, President of MSU. As President, Simon was the administrative hand of the MSU Board, managing and directing all of the Board’s affairs with the authority to issue directives and executive orders in accordance with Board policies.

APPLICABLE LAW AND POLICY

7. MSU receives federal financial assistance and is, therefore, subject to the dictates of Title IX.
8. Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. § 1681(a), states that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . .

9. Title IX is implemented through the Code of Federal Regulations. See 34 C.F.R. Part 106.

10. 34 C.F.R § 106.8(b) provides:

. . . A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

11. In *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1988), the United States Supreme Court recognized that a recipient of federal educational funds intentionally violates Title IX, and is subject to a private damages action, where the recipient is “deliberately indifferent” to known acts of teacher-student discrimination.

12. In *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), the United States Supreme Court extended the private damages action recognized in *Gebser* to cases where the harasser is a student, rather than a teacher.

13. *Davis* held that a complainant may prevail in a private Title IX damages action against a school district in cases of student-on-student harassment where the funding recipient is:

a) deliberately indifferent to sexual harassment of which the recipient has actual knowledge, and

b) the harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.

Davis, 526 U.S. at 1669-76.

14. The Fourteenth Amendment to the United States Constitution provides in pertinent part that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1.

COMMON ALLEGATIONS

15. The MSU Board, by Michigan State Constitution, is vested with the authority to supervise, control, and govern MSU, its operations and employees.
16. The MSU Board implemented and executed procedures, policies, and customs in regard to the events that resulted in the deprivation of Plaintiff's constitutional, statutory, and common-law rights.
17. The MSU Board, and Simon as the Board's administrative hand, are responsible for ensuring that all MSU employees are properly trained and supervised to perform their jobs.
18. The MSU Board and Simon are responsible for the acts and omissions of MSU employees.
19. During the 2014-2015 school year, Plaintiff was an 18-year-old freshman at MSU.
20. Keith Mumphery ("Mumphery") was an MSU student who, upon information and belief, completed his undergraduate degree in May, 2014. Further, upon information and belief, Mumphery was a fifth-year senior for the MSU football team who played for the Spartans during the fall 2014 football season. Mumphery was invited to and did attend Pro Day at MSU on March 18, 2015.
21. During December 2014, Plaintiff met Mumphery on Tinder, a social media app. The two exchanged phone texts but did not meet in person.
22. On March 14, 2015, Mumphery texted Plaintiff that he was back in town and wanted to get together. Plaintiff responded that she was willing to get together and would stay in touch with Mumphery.

23. On March 17, 2015, Plaintiff and some friends began drinking alcohol in celebration of St. Patrick's Day. Plaintiff drank from about 4:00 p.m. until 8:00 p.m. and admittedly was intoxicated.
24. Upon waking, Plaintiff texted Mumphery who came to Plaintiff's dorm room. This was the first time Plaintiff and Mumphery met in person.
25. When Mumphery arrived, Plaintiff was still intoxicated. While Mumphery later denied having any idea that Plaintiff was intoxicated, he initially told the investigating MSU Detective he could tell by some of Plaintiff's text messages she sent before his arrival that she "may have been drinking due to her misspellings and illogical content."
26. Shortly after his arrival, Mumphery kept pulling Plaintiff onto his lap even though she kept trying to stand up and walk away. Plaintiff just wanted to hang out but Mumphery wanted sex. Mumphery sexually assaulted Plaintiff in her dorm room.
27. Plaintiff was upset and crying. Mumphery called Plaintiff a "dumb white girl" and a "tease." Mumphery then left.
28. Plaintiff called friends who came to the dorm room to assist her. With their encouragement, Plaintiff reported the sexual assault to the MSU Police on March 17, 2015. On March 18, 2015, Plaintiff reported the assault to MSU's Office for Inclusion and Intercultural Initiatives ("I3"). The I3 office initiated an investigation into the assault. In April 2105, MSU renamed the I3 the Office of Institutional Equity ("OIE") and designated the OIE with conducting Title IX investigations.
29. OIE assumed responsibility for Plaintiff's assault investigation on or about April 2015.

30. On September 8, 2015, close to six months after the assault was reported, OIE finally completed its investigation thus violating MSU's own policy which dictated that investigations were to be completed within 90 days.
31. Pending an investigation, MSU policy required interim measures be put in place to protect the victim. These measures included no contact orders, no trespass orders, housing rearrangements, interim suspensions, counseling, academic support, and facilitating class changes. MSU did not offer Plaintiff any of these measures.
32. During the investigative process, Mumphery could roam the campus completely unrestricted.
33. When the OIE began investigating, the Plaintiff worked in the same building that housed the OIE office.
34. After Plaintiff's first interview with OIE, they learned that Plaintiff worked in the same building. Rather than offering any form of protection, OIE merely told Plaintiff to be on the lookout for Mumphery since he would be coming to the building periodically for his OIE interviews. OIE took no steps to keep Mumphery away from Plaintiff. OIE did not notify her when Mumphery would be in the building. Plaintiff was not offered a no-contact order or any other means of protection from Mumphery.
35. Plaintiff ended up quitting her job because she was so fearful of running into Mumphrey or of him retaliating against her.
36. At no point during the investigation was Plaintiff adequately advised of her Title IX rights. Plaintiff was not offered the accommodations she was entitled to such as a no - contact order, no-trespass order, housing rearrangements, interim suspension, counseling, academic support, and class changes.

37. Plaintiff's right to an educational opportunity came to a screeching halt. Plaintiff floundered. Plaintiff's grades suffered, and she could not sleep. Plaintiff suffered from flashbacks, nightmares, hypervigilance, and depression.
38. On her own initiative, without the assistance of MSU, Plaintiff eventually sought counseling services through the Olin Center. However, because of the limited counseling services offered by Olin, Plaintiff later sought private counseling. There was no offer or information from MSU regarding financial assistance for counseling.
39. Plaintiff was afraid every day after the assault. Plaintiff did not know who knew about the assault or who might retaliate against her. She was fearful that she would see Mumphery, his friends, or his fellow football players. Plaintiff constantly looked over her shoulder and became withdrawn.
40. In September 2015, the beginning of Plaintiff's sophomore year, OIE finally completed its initial investigation. OIE found that Mumphery had not violated MSU's "Policy on Relationship Violence and Sexual Misconduct." Plaintiff was devastated.
41. Plaintiff remained fearful and anxious and her grades were suffering. Thus, sometime during mid-year of her sophomore year, Plaintiff sought help from MSU's Resource Center for People with Disabilities ("RCPD). Again, Plaintiff sought this help on her own initiative, she was not told that accommodations were available to her.
42. RCPD issues a student a "school visa" if the student is struggling in school. However, a student must first meet with a RCPD representative to submit an application in order to receive the visa. Plaintiff was not even sure if she would qualify for such a visa because she was sexually assaulted, not "disabled" in the familiar sense of the word.

43. Plaintiff attended the first scheduled meeting but the RCPD representative did not show up. RCPD cancelled the second meeting about ten minutes before the meeting was to take place. Towards the end of her sophomore year, in March 2016, Plaintiff finally met with a RCPD representative to obtain the visa.
44. Plaintiff had to provide a basis for requesting the visa, requiring the Plaintiff to describe the sexual assault to the RCPD representative, traumatizing her again.
45. Before Plaintiff's assault, the United States Department of Education's Office of Civil Rights ("OCR") received two separate complaints regarding MSU's non-compliance with Title IX. Thus, the OCR conducted an extensive investigation into MSU's Title IX procedures and compliance.
46. On September 1, 2015, OCR submitted its written findings to MSU in an exhaustive report. OCR determined that:
 - a. MSU had violated Title IX implementing regulations;
 - b. Had violated OCR investigative guidance procedures in several respects; and
 - c. Had failed to comply with MSU's own official policies and measures.
47. Because of these violations, MSU signed a "Resolution Agreement" dated August 28, 2015, to "address the Title IX compliance issues OCR identified during its investigation." This Resolution Agreement was entered into while OIE was conducting its initial investigation into Plaintiff's assault. EXHIBIT 1.¹
48. Under the Resolution, MSU was required to examine past grievance files and evaluate them to determine whether those grievances were handled properly and whether any additional actions or investigations were warranted.

¹ Letter from Meena Morey Chandra, Director OCR, Region XV, to Kristine Zayko, Deputy General Counsel, Michigan State University, Dated September 1, 2015, Pages 40-42.

49. Thus, on January 22, 2016, a review panel convened and determined that OIE made both procedural error and arbitrary and capricious findings when investigating Plaintiff's sexual assault complaint. OIE was directed to reopen the investigation to clarify its findings and to remedy the procedural errors.
50. A reinvestigation commenced and, on March 21, 2016, a full year after the assault occurred, OIE found that Plaintiff had not given "consent" as defined in MSU's Policy on Relationship Violence and Sexual Misconduct and that Mumphrey violated the policy by sexually assaulting Plaintiff. OIE then referred the matter to the Department of Student Life's Student Conduct and Conflict Resolution Office to determine possible sanctions.
51. Both Plaintiff and Mumphrey were notified of these findings on or about March 21, 2016.
52. After OIE determined that Mumphrey had sexually assaulted Plaintiff, the Defendants again did not provide Plaintiff with any Title IX information regarding academic accommodations, counseling services, a no-contact order, or relocation accommodations.
53. After the second OIE decision, it took another three months for sanctions to be issued against Mumphrey. Sanctions were finally issued June 7, 2016. By this time Mumphrey was no longer a student, having obtained his undergraduate degree in May 2014, and having completed his final football season in the fall of 2014.²

² Mumphrey was "red-shirted" his freshman year and was thus eligible to play as a fifth year "senior" during the fall/winter 2014 football season.

54. Because Mumphery had already graduated and could not be dismissed, MSU banned him from the MSU campus and facilities until December 31, 2018, and banned him from re-enrolling at MSU “in any capacity.” Violation of any of the sanctions could result in being arrested.³
55. Mumphery was notified of these sanctions via email on June 7, 2016.
56. Eight days later, on June 14, 2016, MSU sent out a “tweet” on Twitter stating that Mumphery was invited to and would be attending a MSU sponsored football camp to be held June 18, 2016. EXHIBIT 2.⁴
57. Mumphery was also invited to attend a MSU sponsored golf outing scheduled for June 17, 2016.
58. The Defendants invited Mumphrey back to the MSU campus after Mumphrey had been found in violation of the Defendants’ own policies regarding sexual assault and violence, and he had been prohibited from using or visiting University facilities.
59. Despite sanctions being in place, Mumphrey appeared at the golf outing.
60. MSU’s response was to protect Mumphrey and to “assist [Mumphery] in securing travel arrangements.”
61. No attempt was made to notify Plaintiff that Mumphrey was present on the MSU campus, to verify that Plaintiff was safe and in a secure location, or inform Plaintiff that Mumphrey had been removed from the campus.
62. During that June weekend, Plaintiff was terrified when her friends notified her that Mumphrey had been spotted on campus and around East Lansing. Plaintiff began calling campus authorities but received no information and was merely shuffled from

³ *Detroit Free Press*, May 31, 2017 “Keith Mumphery expelled in 2016 for MSU sexual misconduct violation.”

⁴ Mumphery is referenced as “Georgiaboy.”

department to department. Plaintiff had no information about Mumphery's whereabouts aside from the tweet dated June 14, 2015.

63. Plaintiff has been diagnosed with Post-Traumatic Stress Disorder caused by the stress of dealing with the rejection and failures of the Defendants to help her, as they were required to do by law.

64. Upon information and belief, Defendants have engaged in a custom and practice of suppressing sexual assault grievances, of violating their own policies regarding sexual assault investigations, violating Title IX and Equal Protection of Laws, and thereby encouraging a culture of sexual violence and creating a hostile educational environment.

65. On information and belief, Defendants have fostered an atmosphere of failure to address sexual assault overall and the athletics department specifically.

66. Upon information and belief, MSU had not made a finding of any violation of MSU's Policy on Relationship Violence and Sexual Misconduct before 2012.

COUNT I
VIOLATION OF TITLE IX AS TO
MICHIGAN STATE UNIVERSITY, MICHIGAN STATE
UNIVERSITY BOARD OF TRUSTEES, AND SIMON
(20 U.S.C. § 1681, *et seq*)
Deliberate Indifference to Sexual Harassment

Paragraphs 1 through 66 are incorporated by reference as if stated in full herein.

67. The sex-based harassment articulated in Plaintiff's general allegations was so severe, pervasive, and objectively offensive that it deprived Plaintiff of access to educational benefits provided by the school.

68. Defendants created and/or subjected Plaintiff to a hostile educational environment in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (“Title IX”), because:

- a. Plaintiff, a female student, was a member of a protected class.
- b. Plaintiff was subjected to sexual harassment in the form of a sexual assault by another student.
- c. Plaintiff was subjected to harassment based on her sex.
- d. Plaintiff was subjected to a hostile educational environment created by Defendants’ lack of effective and appropriate policies and procedures to properly prevent, investigate, and address sexual assault and harassment and/or lack of implementation of effective and appropriate policies and procedures to properly prevent, investigate, and address sexual assault and harassment.

69. Defendants’ failure to promptly and appropriately respond to the sexual harassment resulted in Plaintiff, on the basis of her sex, being excluded from participation in, being denied the benefits of, and being subjected to discrimination in MSU’s education program in violation of Title IX.

70. Defendants failed to take immediate, effective remedial steps to resolve the complaint of sexual harassment and instead acted with deliberate indifference toward Plaintiff.

71. Defendants persisted in its actions and inaction even after it had actual knowledge of the harm suffered by Plaintiff.

72. Defendants engaged in a pattern and practice of behavior designed to discourage and dissuade students who had been sexually assaulted from seeking assistance and protection: Defendants engaged in suppressing sexual assault grievances, violated its

own policies regarding sexual assault investigations, violated Title IX, and provided preferential treatment to male athletes.

73. This policy constitutes disparate treatment of female students and has a disparate impact on female students.

74. Plaintiff has suffered emotional distress, psychological damages, physical manifestation of psychological distress, humiliation, loss of self-esteem, loss of enjoyment of life, loss of earnings, loss of earning capacity, and past and ongoing medical expenses as a direct and proximate result of Defendants' deliberate indifference to her rights under Title IX.

COUNT II
1983 VIOLATION AS TO
MICHIGAN STATE UNIVERSITY, MICHIGAN STATE
UNIVERSITY BOARD OF TRUSTEES, AND SIMON
(42 U.S.C. § 1983)

Paragraphs 1 through 74 are incorporated by reference as if stated in full herein.

75. Plaintiff, being a female student, was a member of a protected class.

76. Under the Fourteenth Amendment, Plaintiff had the right as a public university student to personal and bodily integrity and Equal Protection of Laws.

77. Defendants subjected Plaintiff to violations of her right to personal security and bodily integrity and Equal Protection of Laws by: failing to train and supervise MSU administrators, officials, and employees and by manifesting deliberate indifference to the sexual assault of Plaintiff.

78. Defendants had and continue to have unconstitutional customs and policies of:

- a. Failing to timely investigate evidence of criminal and tortious misconduct against students in the nature of violations of their right to personal security and bodily integrity.
 - b. Failing to adequately train and supervise MSU administrators, officials, and employees with regard to maintaining, preserving, and protecting students from violations of their right to personal security, bodily integrity, and Equal Protection of Laws.
 - c. Providing preferential treatment to MSU male athletes.
79. On information and belief, Defendants have followed these unconstitutional customs and policies not only regarding Plaintiff but also regarding criminal and tortious misconduct committed against other MSU students.
80. Defendants customs, policies and/or practices constitute a disparate treatment of females and had a disparate impact on female students.
81. Defendants are or were, at all at the time of the events stated within, policymakers for the purpose of implementing the unconstitutional customs, policies and/or practices.
82. Plaintiff has suffered emotional distress, psychological damages, physical manifestation of psychological distress, humiliation, loss of self-esteem, loss of enjoyment of life, loss of earnings, loss of earning capacity, and past and ongoing medical expenses as a direct and proximate cause of Defendants' deliberate indifference to her rights under the Fourteenth Amendment.

COUNT III
MONELL LIABILITY FOR FAILURE TO TRAIN AND SUPERVISE
AS TO RESPONSE TO SEXUAL ASSAULT
AS TO MICHIGAN STATE UNIVERSITY, MICHIGAN STATE
UNIVERSITY BOARD OF TRUSTEES, AND SIMON
(42 U.S.C. § 1983)

Paragraphs 1 through 82 are hereby incorporated by reference as if set forth in full herein.

83. Defendants MSU Board and Simon were state actors working for MSU, a federally funded school system.

84. Defendants acted under color of law when refusing/failing to respond to Plaintiff's student-on-student sexual assault on university grounds.

85. Defendants failed to preserve Plaintiff's constitutional right to equal protection as guaranteed by the Fourteenth Amendment.

86. Under the Equal Protection Clause of the Fourteenth Amendment, Plaintiff had the right to equal access to an educational environment free from harassment and discrimination.

87. Defendants should have known that their response to sexual assault allegations must comply with federal law, particularly as outlined in Title IX's published and widely promulgated implementing regulations.

88. Defendants violated Plaintiff's right to equal access by:

- a. Failing to take steps to protect Plaintiff as necessary.
- b. Treating Plaintiff with deliberate indifference.
- c. Failing to provide and/or failing to implement a safe, non-retaliatory, and unbiased grievance procedure for students to file complaints of sexual discrimination, including complaints of sexual violence.

89. Defendants violated Plaintiff's Fourteenth Amendment right to equal protection by failing to properly train and supervise MSU administrators, officials, and employees as to these mandated investigative requirements.

90. These policies and/or practices constitute disparate treatment of females and had a disparate impact on female students.

91. Defendants' actions and lack of actions were the proximate cause of Plaintiff's emotional distress, psychological damages, physical manifestation of psychological distress, humiliation, loss of self-esteem, loss of enjoyment of life, loss of earnings, loss of earning capacity, and past and ongoing medical expenses, resulting from Defendants' deliberate indifference to Plaintiff's right to equal protection under the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully requests judgment in her favor and against Defendants as follows:

- A. Compensatory damages for Plaintiff's psychological and emotional distress, physical manifestation of emotional distress, embarrassment, loss of self-esteem, humiliation, loss of enjoyment of life, prevention of obtaining full enjoyment of life, loss of earnings past, present, and future, loss of earning capacity, past, present, and future expenses for medical and psychological treatment and therapy;
- B. Punitive damages;
- C. Injunctive relief requiring Defendants to take effective steps to prevent sex-based discrimination and harassment, including sexual assault, in all its programs and activities; fully investigate conduct that may constitute sex-based harassment and/or sexual assault; mitigate the effects of harassment and/or assault including by eliminating any hostile environment that may arise from or contribute to it.
- D. Statutory interest;
- E. Costs;

F. Reasonable attorney fees;

G. Such other relief as the court deems appropriate.

JURY DEMAND

Now comes Plaintiff by and through her attorneys, Karen Truskowski and Julie A. Jacot, and demands a trial by jury.

DATED: 11/26/2017

/s/ Karen Truskowski (P56929)

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