

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

JANE DOE, PLAINTIFF, v. MICHIGAN STATE UNIVERSITY and UNIDENTIFIED ROE, 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.
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 Plaintiff and

Defendant are both located in this judicial district.

THE PARTIES

3. Plaintiff was, at all material times, a student at Michigan State University.
4. Michigan State University (“MSU”) is a public university receiving federal funds. MSU is governed by the Michigan State University Board of Trustees.
5. Unidentified Roes were, at all material times, employees or counselors of the MSU Counseling Center and were acting as agents of the Defendant.

APPLICABLE LAW AND POLICY

6. MSU receives federal financial assistance and is subject to the dictates of Title IX.
7. 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. . .

8. 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. While a school in itself may not be committing the sexual harassment, it can be said

to be intentionally discriminating if it knows of severe and pervasive sexual harassment occurring within its control, for example, and does nothing. *Gebser*, 524 U.S. at 290.

13. 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.

14. *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.

COMMON ALLEGATIONS

15. The evening of April 11, 2015, and morning of April 12, 2015, Plaintiff was an 18-year-old in her first year at Michigan State University (MSU), with the life-long dream of becoming a sports journalist.

16. John Doe #1, John Doe #2, and John Doe #3 (JD1, JD2, and JD3) were all MSU student athletes who played on the MSU basketball team.

17. On the evening of April 11, 2015, Plaintiff, along with her roommate, Jane Roe1 (JR1) went to Harper's Bar in East Lansing MI.

18. Sometime after midnight, in the early morning of April 12, 2015, most of the MSU basketball team arrived at Harper's Bar, including individuals identified as JD1, JD2,

and JD3. The team had just returned to East Lansing earlier in the week from participating in the NCAA tournament after being eliminated from the Final Four by Duke University.

19. JD1 approached Plaintiff and offered to buy her a drink. Plaintiff accepted. JD1 asked if Plaintiff would like to meet the "other guys" on the basketball team. Plaintiff accepted this invitation.

20. At the time, the Plaintiff was a sports journalism major, so interacting with members of the basketball team was of interest to her. At no time did Plaintiff indicate she had a romantic interest in any of the team members that approached her.

21. One of the team members asked Plaintiff to come to their apartment for a party. As an incentive to the Plaintiff to come to this party, one of the team players lied and told the Plaintiff that Plaintiff's roommate JR1 was already headed to the party. At this point, Plaintiff was having a hard time holding on to her glass even though she had not had a lot to drink.

22. Plaintiff accepted a car ride to the party from JD1 and JD2. The location of the party turned out to be JD2's off-campus apartment.

23. Upon arrival, there was no party as few people were present. At this point, Plaintiff was extremely hungry and thirsty.

24. Plaintiff quickly realized that her roommate JR1 was not at the apartment as Plaintiff had been told.

25. Plaintiff was feeling discombobulated. She tried to send a phone text, but she could not control her thumbs to formulate a text.

26. JD1 pulled Plaintiff into a bedroom and told her "you are mine for the night." This

made Plaintiff very uncomfortable, as she had no intention of having any physical contact with any of the people present at the party. Plaintiff was able to leave the bedroom and make her way back into the living room.

27. Music was playing from a laptop. Plaintiff tried to load a song onto the laptop but again she could not do so, as she could not manipulate her hands properly. Plaintiff realized something was wrong and she thought she might have been drugged.

28. JD2 offered to show Plaintiff his basketball memorabilia. Plaintiff agreed and asked for some water because she was incredibly thirsty.

29. Plaintiff was given water while JD2 took her into his bedroom where Plaintiff thought he was going to show her his basketball memorabilia. Plaintiff was drinking the water when the room went dark.

30. Plaintiff was forcefully thrown face down on the bed, held in place so she could not move, while JD2 raped Plaintiff from behind. Plaintiff was crying, she could not move, nor could she speak. At no time did she consent to the sexual activity.

31. As soon as JD2 finished raping Plaintiff, JD1 and JD3 each came in, also held Plaintiff down and took turns raping her.

32. Plaintiff does not remember anything else until she woke up on the couch a few hours later in JD2's apartment. Plaintiff called a taxi and went back to her dorm room in Brody Hall.

33. When Plaintiff saw her roommate JR1, she found out that JR1 knew nothing about the party and that JR1 had been looking for Plaintiff but could not find her.

34. Plaintiff was distraught, traumatized, and crying. Unsure what to do, she confided in Jane Roe 2 (JR2), another friend that lived in her dorm. On April 20th, 2015, friend

JR2 took Plaintiff to the Michigan State University Counseling Center (MSUCC) where Plaintiff reported the rape to a counselor and Plaintiff completed an initial intake and assessment.

35. When Plaintiff disclosed to the counselor that the three attackers were notable MSU athletes on the basketball team, the counselor suddenly announced to the Plaintiff that she needed another person in the room with her and the Plaintiff. The counselor's demeanor completely changed.
36. Another MSUCC staff person was brought into the room.
37. Plaintiff was not clear who this additional person was or why this person was brought in.
38. The MSUCC staff told Plaintiff that her options were to either file a police report or deal with the aftermath of the rape(s) on her own.
39. The MSUCC staff made it clear to Plaintiff that if she chose to notify the police, she faced an uphill battle that would create anxiety and unwanted media attention and publicity as had happened with many other female students who were sexually assaulted by well-known athletes.
40. Comments were made by MSUCC staff to the effect of "we have had many other students in the same situation who have reported, and it has been very traumatic for them."
41. Plaintiff was told by the MSUCC staff that they had seen a lot of these cases with "guys with big names" and the best thing to do is to "just get yourself better" implying to the Plaintiff that it would not be in the Plaintiff's best interest to report the incident to law enforcement.

42. Plaintiff was expressly told by MSUCC staff that "if you pursue this, you are going to be swimming with some really big fish."
43. Plaintiff was not advised by MSUCC staff to seek STD or pregnancy testing, have a physical exam, or seek medical treatment.
44. Plaintiff was so discouraged by the representations made by the MSUCC Counseling staff she became frightened to the point that she decided she could not report the rape(s) to law enforcement.
45. Further, the MSUCC staff did not notify Plaintiff of her option to report the rape(s) to the Office of Institutional Equity (OIE) nor did they notify her of her Title IX rights, protections, and accommodations.
46. The MSUCC staff referred Plaintiff to the Michigan State University Sexual Assault Program. (SAP.)
47. Because Plaintiff felt so discouraged and frightened after her encounter at the MSUCC, she did not seek assistance at the SAP until ten months later.
48. Plaintiff lived at Brody Hall on the MSU campus. Although the attackers did not live in Brody Hall, Plaintiff would often see one or all three attackers at the Brody Dining Hall which caused panic and flashbacks. Plaintiff lived in fear every day that she would see her attackers.
49. Plaintiff was never informed of her right to have a no-contact order put in place to keep the three men out of her dorm residence.
50. In October 2015, Plaintiff had become so traumatized, depressed, and withdrawn to the point that she was admitted to the Sparrow Hospital outpatient psychiatric day-program for intensive psychiatric treatment.

51. Due to Plaintiff's mental condition in the fall semester of 2015, Plaintiff had stopped attending her classes, and eventually was forced to withdraw for the semester.
52. Plaintiff eventually received a refund of her tuition money after explaining to University Officials that she had been raped and was suffering emotional, mental, and physical trauma because of the rape(s). This traumatized Plaintiff, having to relive the sexual assault once again.
53. After disclosing this information to University Officials with authority to approve her withdrawal from classes and a refund of her tuition, Plaintiff again was not informed of any of her rights to academic assistance, she was not given a referral to the OIE, nor was any inquiry made as to any assistance she might require upon her return to the university the following semester.
54. Plaintiff resumed classes in January 2016. Plaintiff changed her major as her dream of becoming a sports journalist had been destroyed.
55. As with the MSUCC, the SAP also failed to notify Plaintiff about the OIE or Plaintiff's Title IX rights, protections, and accommodations, even though it is part of their protocol to do so. EXHIBIT A.
56. In February 2016, Plaintiff began treatment sessions at the SAP but did not feel comfortable with the limited program or the therapist, so Plaintiff began treatment with a private psychiatric clinic.
57. Since the assaults, Plaintiff has been prescribed multiple medications to help her with the depression, anxiety, panic attacks, and insomnia.
58. On information and belief, MSU has fostered a culture in which female victims are discouraged from reporting sexual assaults when those assaults are perpetrated by

male athletes, thus protecting the university, the male athletics programs, and the male athletes at the expense of the female victims.

59. The repeated comments made by the staff at the MSUCC suggest that female students are discouraged from reporting sexual assault when the alleged perpetrators are well-known athletes.

60. Discouraging female students from reporting sexual assaults committed by student athletes plausibly creates an environment where football and basketball players can sexually assault females without repercussion.

61. This environment creates a heightened risk of sexual assault for females.

62. MSU has been under scrutiny regarding its handling of sexual assault cases, especially as they relate to MSU athletics.

63. As of the writing of this complaint, MSU is under investigation by the Michigan Attorney General, the NCAA, the Michigan Legislature, United States Congress and Senate, the Federal Department of Education Office of Civil Rights, and the Department of Education Federal Student Aid Division.

64. MSU has not been transparent when dealing with various investigators, agencies, and media regarding sexual assault incidents and/or allegations.

65. MSU actively sought to conceal the names of MSU athletes named in campus police records.¹

66. MSU routinely allowed its Athletic Director, Mark Hollis, and sometimes coaches, to investigate complaints involving MSU athletes.²

67. According to a former MSU sexual assault counselor, if an athlete was involved,

¹ See ESPN, OTL: Michigan State secrets extend far beyond Larry Nassar Case.

² *Id.*

normal protocol and policy was “swept away” and the complaint was by handled by administration and athletic officials “behind closed doors.”³

68. MSU created and fostered an unwritten, official, policy of treating sexual assault complaints perpetrated by MSU male athletes differently than they treated non-athlete related sexual assault complaints.

69. MSU’s policy was designed to suppress public knowledge and prevent prosecution of MSU athletes to the detriment of the sexual assault victims.

70. Said policy emboldened male athletes and has given them unwritten permission to commit acts of sexual assault without consequence.

71. During an Office of Civil Rights investigation, MSU students stated “that the University’s athletes have a reputation for engaging in sexual harassment and sexual assault and not being punished for it, because athletes are held in such high regard at the University.”⁴

72. MSU created an atmosphere and culture in which female victims became vulnerable to predatory athletes.

**COUNT I VIOLATION OF TITLE IX
(20 U.S.C. § 1681, *et seq*)**

Paragraphs 1 through 72 are incorporated by reference as if stated in full herein.

73. 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.

74. Defendants created and/or subjected Plaintiff to a hostile educational environment in

³ *Id.*, ESPN quoting Lauren Allswede, a MSU sexual assault counselor from 2008-2015.

⁴ U.S. Department of Education, Office of Civil Rights letter dated September 1, 2015 to Christine Zayko, Deputy General Counsel, Michigan State University.

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(s).
 - c. Plaintiff was subjected to harassment based on her sex.
 - d. Defendant created the circumstances which permitted the sexual assault to take place:
 - i. Defendant failed to follow normal reporting and investigative procedures when MSU athletes were involved.
 - ii. Defendant allowed the Athletic Director and coaches to conduct investigations.
 - e. Defendant’s failure to follow normal protocols in order to protect the university and its high-profile sports teams cultivated an environment in which female students became vulnerable to sexual assault.
 - f. Plaintiff was subjected to a hostile educational environment created by Defendant's 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.
75. Defendant's 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.

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

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

78. Defendant engaged in a pattern and practice of behavior designed to discourage and dissuade students who had been sexually assaulted from seeking assistance and protection: Defendant engaged in suppressing sexual assault grievances, violated its own policies regarding sexual assault investigations, violated Title IX, and provided preferential treatment to male athletes

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

80. 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 Defendant's deliberate indifference to her rights under Title IX.

**COUNT II VIOLATION OF § 1983
(42 U.S.C. § 1983)
AS TO DEFENDANTS UNIDENTIFIED ROES**

Paragraphs 1 through 80 and all subparts are incorporated by reference as if stated in full herein.

81. Under the Fourteenth Amendment, Plaintiff, a female university student, had the right to Equal Protection of Laws.

82. Defendants Roes were state actors acting under the color of state law.

83. Defendant Roes subjected Plaintiff to violations of her right to and Equal Protection

of Laws by maintaining a custom, policy and/or procedure:

- a. Of actively discouraging victims of sexual assault from reporting when the perpetrator was an MSU male athlete.
- b. Of failing to notify sexual assault victims of their Title IX protections, rights and accommodations
- c. Of failing to notify sexual assault victims of all reporting and confidentiality options.

84. 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 Defendant's deliberate indifference to her rights under Title IX.

WHEREFORE, Plaintiff respectfully requests judgment in her favor and against Defendant 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 Defendant 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 Truszkowski and Julie A. Jacot, and demands a trial by jury.

DATED: April 9, 2018

/s/ Karen Truszkowski (P56929)

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