

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS  
CIVIL COURT DEPARTMENT

DAISY TACKETT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____
	)	
THE UNIVERSITY OF KANSAS,	)	Chapter 60
	)	JURY TRIAL DEMANDED
Defendant.	)	

**PETITION**

1. Plaintiff Daisy Tackett brings this suit to seek compensation and redress for harms she suffered as a result of a hostile educational environment created by the Defendant University of Kansas in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a).

2. This court has jurisdiction over Plaintiff's Title IX claims. A Kansas District Court is a court of general jurisdiction. *Undrey Engine & Pump Co. V. Eufaula Enterprises ,Inc.*, 22 6 Kan. 186, 190, 597 P.2d 246 (1979). State courts have "inherent authority, and are thus presumptively competent, to adjudicate claim arising under the laws of the United States." *Yellow Freight Systems, Inc. v. Donnelly*, 494 U.S. 820, 823 (1990)

3. Plaintiff Tackett is a female student and athlete who at all relevant times was a student, resident and athlete at the University of Kansas. In January of 2016 she was forced to withdraw from KU and moved back home to Florida.

4. At all material times, the University of Kansas (“KU”) was a Kansas educational institution located in Douglas County, Kansas, and the recipient of federal grant funds.

5. John Doe G is and was at all times relevant a KU student, a resident of the KU dormitory known as the Jayhawk Towers, and a KU football team member.

6. Title IX, 20 U.S.C. § 1681(a) states:

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 educational program or activity receiving Federal financial assistance.

7. A school that receives federal funds violates Title IX and is subject to a private action for damages where the school is “deliberately indifferent” to known acts of discrimination against students. *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1988).

8. The protections of Title IX extend to situations where the school is deliberately indifferent to the sexual harassment of a student by another student. *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).

9. KU is responsible for enforcing these policies and ensuring that its employees are adequately trained to follow these policies.

10. KU’s employees were operating within the scope of their employment at all time relevant with regard to the events described herein.

11. KU owns and manages student dormitories, including apartments commonly known as the Jayhawker Towers, which has a specific history of

publically reported sexual assaults of women, including but not limited to such recent events as:

a. In March of 2013, the KU public safety office investigated a report of a sexual assault of a female at Jayhawker Towers Apartments.

b. In October 2013, KU received a report of a rape a female KU residence hall resident by a KU student.

c. In April of 2014, a KU female residence hall student reported a rape at her residence hall.

d. In October of 2014, two female KU residence hall students reported sexual assaults at their residence hall by a KU student and another man.

e. In March of 2014, a KU football player was arrested after a 19-year-old KU student reported that she had been fondled while passed out in the parking lot of the Jayhawker Towers, where the football player was a resident.

f. On November 10, 2014, the KU public safety office received a report of an alleged sexual battery at the Jayhawker Towers.

g. In February of 2016, a KU football player was arrested held on suspicion of sexual battery and criminal restraint stemming from conduct at the Jayhawker Towers.

12. KU's police chief for 38 years said in January of 2016 that in recent years a sharp increase of reported sexual assaults at KU has occurred, and that sexual assaults remained the biggest issue for the campus.

13. According to the 2015 Clery Report for KU, in 2014 there were 14 rapes and 10 fondlings reported on campus, with 10 of the rapes and six of the fondlings occurring in KU's dorms. In 2013 there were 13 forcible sex offenses reported, with 9 of them occurring in KU's dorms. In 2012, there were only 3 forcible sex offenses reported, with two in KU's dorms.

14. In 2014, KU made representations online on the institution's website that KU and its residence halls were a "safe community" and that "Security is a priority."

15. In Fall of 2014, Plaintiff enrolled at KU as a scholarship member of the school's rowing team.

16. Early in the 2014-2015 school year, following a Halloween party, Plaintiff went to the Jayhawker Towers, where a group of KU students and athletes had gotten together.

17. John Doe G arrived at the gathering at the Jayhawker Towers and appeared inebriated.

18. John Doe G invited Plaintiff into his Jayhawker Towers apartment to watch a television show and then sexually assaulted her.

19. Plaintiff remained in his apartment in a state of shock and horror until John Doe G said he needed to leave in the morning for football practice.

20. Plaintiff chose not to report the sexual assault at the time, although she did confide in a teammate regarding what had happened.

21. Throughout the rest of the 2014-2015 school year, Plaintiff made a valiant effort to have a normal college experience. Plaintiff attended classes, participated in student senate and the KU rowing team, although she had to take measures to avoid meeting Jon Doe G on campus and experienced panic attacks on campus and when practicing at KU's football stadium.

22. Plaintiff returned to KU and the KU rowing team for the 2015-2016 academic year.

23. The head coach of the KU rowing team was and remains Rob Catloth, and the assistant coach was Carrie Callen.

24. Plaintiff witnessed Coach Catloth make ongoing racial remarks about some rowers and numerous comments about the weight of the female athletes, calling some of the women "fat."

25. Several rowers had reported Coach Catloth's conduct to KU's Senior Woman Administrator Debbie Van Saun, whose responsibility includes overseeing Title IX compliance and gender equity principles.

26. In early October of 2016, many of the KU rowing team members including Plaintiff met with a KU sports psychologist to discuss their concerns about Coach Catloth.

27. At this meeting, rowing team members discussed fairness to players, racial comments, and comments about players' weight, as well as concerns that their reports to KU administrator Van Saun regarding Coach Catloth's conduct were ignored.

28. The next week, following a competition, Coach Catloth, Assistant Coach Callen, Van Saun, and the rowing team assistant coach told everyone on the team who participated in the team meeting about Coach Catloth to remain and inform them of their complaints.

29. Many members of the rowing team repeated what they had discussed at the prior meeting, including Coach Catloth's comments and Van Saun's indifference to their reports. For her part, Plaintiff said Coach Catloth should apply fair standards to the players and that he should not be as critical about players' weight.

30. Later in October of 2015, another KU rowing team member came to Plaintiff and told her that she had also been sexually assaulted by John Doe G at the Jayhawk Towers, and that she had reported the assault to the police and to KU.

31. After learning that another woman had been attacked, Plaintiff decided she needed to report John Doe G's conduct also, so she first reported the rape to the rowing team's trainer, who referred her to a KU Athletics Department physician, who referred her to Van Saun, who set up a meeting between Plaintiff and a member of KU's Institutional Opportunity & Access ("IOA") office.

32. The meeting was scheduled at the same time as a KU rowing team practice.

33. Plaintiff therefore went to Assistant Coach Callen and asked her if she could miss a practice to participate in the IOA meeting.

34. Plaintiff also told the Assistant Coach that she had been raped, about the stress she had been experiencing as a result of the rape, worse now after her report, and emphasized to Callen that being a member of the KU rowing team was important to her and was really helping her to cope with the situation.

35. Assistant Coach Callen told Plaintiff that she needed to tell Coach Catloth that she was going to miss practice.

36. Plaintiff therefore informed Coach Catloth that she needed to miss practice to meet with someone at the IOA.

37. Plaintiff met with the IOA investigator and provided him details of her assault.

38. After she met with the IOA investigator, Plaintiff was departing class at Blake Hall on the KU campus, a low-traffic area of campus, when she encountered John Doe G, whom she had never seen at that time and location of campus, staring her down.

39. The experience unnerved her and caused her experience panic, and that same day, Plaintiff reported the encounter to the IOA investigator.

40. Later that same week, Plaintiff again saw John Doe G in front of Watson Library, again at a place and time she had never before encountered him; the KU football player stared her down and called her a derogatory name.

41. Plaintiff again reported the encounter to the IOA investigator.

42. In response to her reports, KU eventually provided an employee of the IOA office to walk with the Plaintiff from her class at Blake Hall to Wescoe Hall for her next class.

43. During October, November and December of 2015, Plaintiff's anxiety and panic attacks worsened and they would frequently manifest during workouts at the KU football team's stadium.

44. Plaintiff also began to withdraw from campus life, avoiding athletic facilities and dining halls where she might encounter John Doe G or his friends.

45. In early December in 2015, Coach Catloth informed her that he would not allow her to attend an annual training trip to Florida later that month.

46. Plaintiff told him about her rape, the investigation, what she had been coping with, how much the trip meant to her, and asked him what she needed to prove to be fit enough on the trip, and Coach Catloth told her she had to perform a specific time on a 2k-test.

47. Plaintiff passed the test the very next day.

48. The next week, the KU rowing coaches published the list of who is going on the training trip, and the Plaintiff was still not on the list, although other rowers with less experience and slower times were on the list.

49. Plaintiff therefore met with the coach and showed him the team test results, and showed him that she was faster than many of the people who were selected to go on the trip, but Coach Catloth still would not permit her to travel.

50. Plaintiff requested from Coach Catloth a letter that would permit her to transfer to another school if necessary and told him that the rape and stalking in addition to the rowing team issues may force her to leave.

51. She then met with Coach Catloth and the Assistant Coach in the Coach's office, where he told her that he would give her the letter but not let her transfer to another school in the Big XII.

52. Coach Catloth never permitted her to travel with the team on the trip, even though an extra spot opened on the trip.

53. After winter break, Plaintiff returned to KU for the next semester in January of 2016, and she attended approximately one week worth of classes.

54. KU still had not suspended or expelled John Doe G or concluded its investigation into Plaintiff's report.

55. Plaintiff met with the Coach Catloth, who stated, falsely, that she was not allowed to go on the trip because she had skipped body weight exercises at the football stadium workouts.

56. Plaintiff decided she had no choice but to withdraw from KU.

57. Plaintiff told Coach Catloth that she did not want to quit, but that she needed to leave KU until the investigation into her report was completed. Coach Catloth told them that he would consider allowing her back on the team when she came back. And then he told her not to worry about returning her equipment.

58. Plaintiff met with the IOA and reported Coach Cathloth's retaliation against her.

59. Plaintiff returned home to Florida.

60. In February of 2016, Plaintiff received an email from the coaches asking for her to return her equipment, which consisted of spandex sweatpants, t-shirts and sports bras she had used that semester.

61. Plaintiff also received a letter from KU informing her that it would be billing her for the semester and that the bill would be subject to collections if not paid on time.

62. KU also placed an administrative hold on her transcripts.

63. KU had an official policy of placing KU athletes, in particular KU football players, in KU's Jayhawker Towers Apartments, where they would receive less supervision than other residence hall options.

64. KU knew that sexual assaults were occurring at a high rate at Jayhawker Towers.

65. KU failed to provide adequate supervision, warnings, training, guidance and education to its athletes and KU football players in particular at Jayhawker Towers.

66. The likelihood of such misconduct was so obvious that KU's failure to supervise amounted to deliberate indifference to the rights of Daisy Tackett.

67. In March of 2016, more than four months after her report, KU informed Ms. Tackett that John Doe G had agreed to be expelled.

**COUNT I: TITLE IX DISCRIMINATION – HOSTILE EDUCATIONAL  
ENVIRONMENT**

68. Plaintiff hereby adopts and incorporates the allegations set forth in paragraphs 1 through 67 above as though fully set forth herein.

69. Plaintiff is a member of a protected class.

70. Plaintiff suffered discrimination and harassment on the basis of her gender when her coach made comments about her weight and refused to allow her to participate in her sport.

71. Plaintiff suffered sexual harassment at the hands of a KU student and football player, in a KU dorm with a long history of sexual assaults.

72. Plaintiff also suffered discrimination and harassment on the basis of her participation in a Title IX complaint when the KU football player twice encountered her on campus, staring her down and then calling her a threatening, derogatory name.

73. KU had actual knowledge that Plaintiff had been sexually harassed, that Coach Catloth was making inappropriate comments, denying her opportunities, and that John Doe G had twice sought to intimidate her on campus.

74. KU was deliberately indifferent to harassment Plaintiff suffered, in that:

a. KU had a policy of placing KU athletes and football players in the Jayhawker Towers knowing that they would receive less supervision, and knowing that there was a high likelihood of sexual misconduct occurring.

b. KU failed to take reasonable steps to prevent sexual assaults from occurring at Jayhawk Towers, including failing to train employees properly on preventing, investigating and punishing sexual assaults on campus, and failing to adopt and implement simple, reasonable policies that would lessen the chance of rapes occurring, harassment occurring, or retaliation from occurring.

c. KU failed to immediately issue a “no contact” order to John Doe G after receiving two independent reports of sexual assaults involving him.

d. KU failed to immediately suspend John Doe G pending the outcome of KU’s investigation following two independent reports of sexual assault.

e. KU failed to ban John Doe G from campus pending the outcome of KU’s investigation following two independent reports of sexual assault.

f. KU failed to conduct an expedient investigation or hold a timely hearing in order to resolve Plaintiff’s report.

g. KU failed to take any action on Plaintiff’s report and other KU rowing team members’ reports of inappropriate comments from their rowing coach.

h. KU failed to stop John Doe G from harassing the Plaintiff after she reported his sexual assault.

i. KU failed to stop the KU rowing coach from retaliating against the Plaintiff for participating in the Title IX process.

75. KU’s conduct is prohibited by Title IX.

76. The harassment was unwelcome, severe, pervasive and objectively offensive and deprived plaintiff to access of the educational benefits and opportunities KU offered, including:

- a. A sexual assault in a KU dormitory;
- b. Intimidation by a KU football player on campus;
- c. Refusal by KU to suspend or ban the offending KU football player from campus during the investigation;
- d. Offensive comments regarding the Plaintiff's weight;
- e. Deliberate refusal to allow her to participate in team activities;
- f. Deliberate refusal to allow her to participate in rowing activities at other schools.

77. The harassment had the systematic effect of depriving plaintiff of access to educational benefits or opportunities.

78. Furthermore, Defendant KU deliberately failed to supervise employees that had the means and authority to stop the harassment Plaintiff experienced.

79. Defendant KU's corrective or preventive opportunities regarding plaintiff's report of sexual harassment and retaliation were unreasonable or inadequate.

80. Defendant KU's indifference and resulting inaction was wanton, willful and with reckless disregard and neglect of Plaintiff's rights, safety and well being.

81. As a direct and proximate result of the defendant's wrongful conduct, plaintiff has suffered and continues to suffer great pain of mind, shock, emotional

distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, missed educational opportunities and out-of-pocket costs.

82. Plaintiff has incurred and will continue to incur necessary and reasonable expenses for medical and psychological treatment, therapy and counseling as well as other economic hardships.

83. WHEREFORE, Plaintiff prays for an award of actual damages against Defendant in an amount in excess of \$75,000, for attorneys fees together with interest and costs of suit, for disgorgement of tuition and board payments made on her behalf, for order enjoining KU from continuing to place administrative holds on her transcripts, and for such and further legal and equitable relief as is deemed just and proper.

### **COUNT II: TITLE IX RETALIATION**

84. Plaintiff hereby incorporates and reasserts the allegations contained in paragraphs 1 – 82.

85. Plaintiff engaged in a protected activity under Title IX when she:

- a. Reported her sexual assault.
- b. Reported Coach Catloth's treatment and comments toward herself and other female members of the KU rowing team.
- c. Participated in a group meeting with a KU employee regarding Coach Catloth's treatment of the Rowing Team women and KU administrator Van Saun's lack of effective response.

86. Contemporaneously with her protected activity, Plaintiff suffered adverse actions, including:

- a. Acts of intimidation and witness tampering on campus.
- b. Denial of access to rowing team activities.
- c. Acts to collect bills and equipment.
- d. Refusal to permit her to participate in rowing at other schools.
- e. Holds placed on her records.

87. Plaintiff's protected activity and the adverse actions are causally connected in that:

a. Plaintiff's protected activity and KU's adverse actions occurred within days of one another.

b. The KU football player John Doe G engaged in on-campus harassment and intimidation of Plaintiff immediately after being contacted by KU regarding Plaintiff's report.

c. Coach Catloth's decision to deny her access to the team trip came immediately after Plaintiff reported to him and the KU administrator in their presence that he was engaging in unfair treatment and making inappropriate comments about the weight of the women in his program.

d. KU administrator Debbie Van Saun, who was a subject of the rowing team's complaints, and who failed to act on the rowing team's complaints about Coach Catloth, and who responded to Plaintiff's report of a rape, deliberately failed to stop John Doe G or Coach Catloth from retaliating against Plaintiff.

e. Coach Catloth's reason for not bringing Plaintiff on the team trip – her alleged fitness level – is pretextual, in that she literally and objectively met his stated requirements and other athletes with slower times and less experience were permitted to go.

88. Defendant KU's administration had actual knowledge of the retaliation Plaintiff was suffering.

a. Administrators knew Plaintiff was subjected to a sexual assault on campus;

b. Administrators knew Plaintiff was subject to intimidation and harassment on campus;

c. Administrators knew that Plaintiff's rowing coach had treated her unfairly and made inappropriate comments about her weight and the appearance and weight other female team members in her presence;

d. Administrators knew that Plaintiff's rowing coach was not permitting her to travel with the team despite her absolute qualification to do so.

e. Administrators knew that KU had not been responding effectively to Plaintiff's and the Rowing Team's reports concerning Coach Catloth.

89. Defendant KU did not adequately respond to the retaliation in that:

a. KU knew retaliation was likely following her report of rape but took no proactive steps such as issuing an immediate "no contact" order or suspending John Doe G, or ban him from campus, despite having two independent reports of sexual assault involving him.

b. After receiving Plaintiff's first report of on-campus intimidation, KU failed to suspend John Doe G, ban him from campus, or issue a "no contact" order.

c. After receiving Plaintiff's second report of on-campus intimidation, KU failed to suspend John Doe G or ban him from campus, and instead provided her with an escort between only one of her classes.

d. KU failed to conduct a timely investigation or hold a hearing in a timely fashion.

e. KU failed to stop Coach Catloth from engaging in unfair treatment or making inappropriate comments about women's appearances and weight.

f. KU failed to stop Coach Catloth from denying her access to the team training event in Florida.

g. KU failed to release Plaintiff completely to compete for another school's rowing team.

h. KU failed to stop itself from seeking to unjustly enrich the institution by keeping Plaintiff's tuition and board payments while denying her access to the education and safe housing it promised her.

i. KU failed stop itself from sending a letter requesting Plaintiff to send back all of her used team clothes despite the pettiness of such a request and the coach's own representation that Plaintiff did not have to do so.

j. KU failed to stop itself from placing an administrative hold on Plaintiff's records.

90. An appropriate person had actual knowledge of the discrimination and harassment suffered by Plaintiff.

91. Furthermore, Defendant KU deliberately failed to supervise employees that had the means and authority to stop the harassment Plaintiff experienced.

92. Defendant KU's indifference and resulting inaction was deliberate, wanton, willful and with reckless disregard and neglect of Plaintiff's rights, safety and well being.

93. As a direct and proximate result of defendant's conduct, Plaintiff has suffered and continues to suffer great pain of mind, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, missed educational opportunities and out-of-pocket costs.

94. Plaintiff has incurred and will continue to incur necessary and reasonable expenses for medical and psychological treatment, therapy and counseling as well as other economic hardships.

WHEREFORE, Plaintiff prays for an award of actual damages against Defendant in an amount in excess of \$75,000, for attorneys fees together with interest and costs of suit, for disgorgement of tuition and board payments made on her behalf, for order enjoining KU from continuing to place administrative holds on her transcripts, and for such and further legal and equitable relief as is deemed just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests trial by jury as to all triable issues.

Respectfully submitted,

/s/Dan Curry

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