

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KELLY FAYE HUGHES,)
)
 Plaintiff,)
)
 vs.)
)
 MISSOURI BAPTIST UNIVERSITY,)
 Serve: 1 College Park Dr.)
 St. Louis, MO 63141)
)
 Defendant.)

Cause No.:

**JURY TRIAL DEMANDED
Mo. E.D. Local Rule 38-2.04**

PLAINTIFF’S FIRST COMPLAINT WITH JURY DEMAND

Comes now Plaintiff, Kelly Hughes, by and through her attorneys and for her claims against Defendant Missouri Baptist University (“MBU”), states as follows:

PARTIES

1. Plaintiff is a cisgender female. At all material times Plaintiff was a citizen and resident of the State of Virginia. At the time of events complained of herein, Plaintiff was a student attending MBU.

2. Defendant MBU is a private university located in St. Louis County, Missouri, which acts by and through its agents, servants, and employees. MBU receives federal funding and is subject to Title IX of the Education Amendments of 1972 (“Title IX”); further, MBU is required to comply with state and federal laws including but not limited to Title IX and the Campus Sexual Violence Elimination Act.

JURISDICTION AND VENUE

3. Complete diversity of citizenship exists between the parties of this action and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1332(a).

4. This Court also has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, which gives district courts jurisdiction over all civil actions arising under the Constitution, laws, and treaties of the United States.

5. Additionally, this Court has further subject matter jurisdiction pursuant to 28 U.S.C. § 1343, which gives district courts original jurisdiction over (a) any civil action authorized by law to be brought by any person to redress the deprivation, under color of any State Law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; and (b) any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of the civil rights.

6. Plaintiff brings this action to redress a hostile educational environment pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), as more fully set forth herein. This action is brought pursuant to 42 U.S.C. § 1983 and § 1988, and the Fourth Amendment to the United States Constitution, made applicable to Defendant through the Fourteenth Amendment to the United States Constitution.

7. Plaintiff further invokes the supplemental jurisdiction of this Court, pursuant to 28 U.S.C. § 1367(a), to hear and decide claims arising under state law including breach of contract and negligence.

8. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2) in that Defendant MBU “resides” in this district and/or the incidents giving rise to the claims herein set forth occurred first and primarily in the County of St. Louis, State of Missouri, which is within this judicial district.

APPLICABLE LAW

9. 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...”

10. Title IX is implemented through the Code of Federal Regulations. See 34 C.F.R. Part 106.19. 34 C.F.R. § 106.8(b) which 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. Title IX jurisprudence as well as Department of Education regulations have long recognized that a single event of rape constitutes harassment so severe, pervasive and objectively

offensive that it deprives its victims of access to the educational opportunities provided by the school”

“The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.”

U.S. Department of Education, Office of Civil Rights, “Dear Colleague” Letter of April 4, 2011.

15. Missouri law provides protections for students and requires the exercise of reasonable care on the part of MBU.

16. Missouri law provides for the protection of invitees from foreseeable criminal harm.

17. Missouri law also provides for a cause of action of breach of contract. Plaintiff had an educational contract with Defendant MBU that included agreements and duties to provide adequately for her safety, to adequately and in compliance with law report instance of sexual assault and/or harassment the breach of which cause the damages claimed hereto.

GENERAL ALLEGATIONS

18. At all material times, the Defendant MBU was receiving federal funding, as contemplated by Title IX, 20 U.S.C. § 1681, *et seq.* for its activities including but not limited to financial aid.

19. Defendant MBU implemented and executed policies and customs in regard to the events that resulted in the deprivation of Plaintiff’s constitutional, statutory, and common-law rights.

20. Defendant MBU is responsible for providing the security of its students and guests which it does through its “Public Safety Division,” in effect a private police force.

21. Defendant MBU is responsible for ensuring that all of its employees are properly trained and supervised to perform their jobs.

22. Defendant MBU is responsible for the acts and omissions of its employees, agents, part-time student workers and tenants.

23. Defendant MBU received a report from the Plaintiff concerning the event of a sexual assault on MBU property and the sexual harassment she experienced thereafter on campus.

24. Defendant MBU failed to adequately investigate each and every one of the events the Plaintiff reported in violation of Title IX.

25. Defendant MBU failed to investigate the sexual assault the Plaintiff endured of which Defendant MBU had actual notice thereafter.

26. Upon information and belief, Defendant MBU failed to report the criminal act involved in the report it received from Plaintiff in violation of its obligation under the Clery Act.

27. Defendant MBU failed to report the criminal acts involving violations of an order of protection Plaintiff had against her assailant to wit Defendant MBU had actual or constructive notice at the time they happened.

28. Defendant MBU failed to provide a safe academic environment for Plaintiff that was void of continued harassment once Plaintiff reported that she was sexually assaulted on MBU campus.

29. Defendant MBU employees, including high ranking officials, conspired amongst themselves, and with other University employees, with the common purpose of violating Plaintiff's rights under Title IX including, but not limited to, violating Plaintiff's right to be informed that they could and should report the sexual assault allegations to the police and MBU's duty to report the offense.

30. Defendant MBU employees took several overt acts in furtherance of their common goal, including: misleading Plaintiff; concealing meaningful facts from Plaintiff; lying to Plaintiff; misrepresenting their actions to Plaintiff; failing to provide accommodations necessary to victims; improperly conducting Title IX proceedings that unduly favored the assailant over Plaintiff; failing to prosecute, investigate and report Plaintiff's claims, as well as the related crimes and generally failing to provide the Plaintiff with a safe academic environment free from sexual harassment after she had been sexually assaulted.

31. At all times relevant to this Complaint, Defendant MBU failed to protect Plaintiff, as it negligently discharged its duty to provide safety to the students and guests of the University.

32. As a direct and proximate result of the harassing educational environment created by Defendant MBU's deliberately indifferent response to the sexual assault and subsequent harassment of Plaintiff, as well as violations of her state and federal legal rights, Plaintiff has suffered and continues to suffer untold psychological damage, profound emotional distress, permanent loss of standing in her community and damage to her reputation, and her future relationships have been negatively affected.

33. Plaintiff has also been deprived of meaningful treatment, including medical and psychological support, as a result of Defendant's conduct and the resulting medical environment which they caused with their employee counselors.

34. Plaintiff has also been deprived of a normal college education at the institution of her choice due to Defendant's conduct and the resulting hostile educational environment which they caused.

35. Plaintiff has also been damaged by missed educational opportunities. Also, her future earning capabilities have been damaged by Defendant's conduct and the resulting hostile education environment which they caused.

SPECIFIC FACTS

36. At all times relevant during the 2017-2018 school year Plaintiff was a scholarship student athlete living in on-campus housing at MBU.

37. In the Fall of 2017, Plaintiff was sexually assaulted by an MBU football player and which conduct, and subsequent harassment was severe, pervasive, and objectively offensive.

38. Plaintiff immediately informed her roommates that she had been raped, but like most rape victims, Plaintiff was fearful of reporting her rape to school and law enforcement officials. Plaintiff was fearful that because her assailant was a prominent member of the MBU football team that her allegations would not be treated in an appropriate manner by MBU.

39. A couple of days after the rape, Plaintiff did contact Meredith Dill, Head Trainer of MBU Athletics and informed her of the sexual assault who then took Plaintiff to MBU's Public Safety Division. Plaintiff reported the sexual assault to MBU's Public Safety, but no instructions were provided to her as to whether any physical evidence could be collected, information on how to contact the local law enforcement agency or information on how to obtain an order of protection so that Plaintiff could be free of the already growing harassment mounting against her by the MBU football team. Plaintiff was not even informed of the Title IX process at this time.

40. Approximately two weeks later, Plaintiff was finally informed about the Title IX process at MBU. Already at this time, the proposed process was not being followed by MBU. High level employees and administrators of Defendant MBU informed Plaintiff that they would create a "safe circle" for Plaintiff, but they never stated how that would be accomplished nor did they provide same in any way.

41. For the next month, Plaintiff was constantly harassed by her assailant and members of the MBU football team. Plaintiff would consistently and constantly report this

harassment but Defendant MBU did nothing to curtail this behavior. This severe, pervasive and objectively harassment caused a hostile educational environment for Plaintiff.

42. Due to the complete and deliberate indifference of Defendant MBU, Plaintiff ultimately could no longer withstand the pressure of the constant harassment until she finally obtained an attorney to seek an order of protection against her assailant.

43. At the full order of protection hearing in the St. Louis County Circuit Court, Plaintiff's assailant was represented by an employee of MBU, specifically the Director of Football Operations who is also an MBU adjunct professor. The order of protection was ultimately granted by the Court after a full order evidentiary hearing.

44. After the order of protection was granted, Plaintiff provided a copy of the order to Kim Grey, Defendant MBU's Associate Dean of Students and Director of Career Services, who stated that Plaintiff's assailant had been served with the order of protection but that Defendant MBU had unilaterally made changes to the order of protection without the knowledge of Plaintiff or Plaintiff's legal representative. These changes were made so that it would not affect Plaintiff's assailant's ability to play on MBU's football team.

45. Defendant MBU made false assurances to Plaintiff that she would be safe and that they would make sure that her assailant abided by the order of protection, but they did nothing of the sort. The order of protection was violated numerous times and Plaintiff reported these violations to MBU's Public Safety who would then turn it on Plaintiff to make her feel like she had done something wrong. Plaintiff could no longer work at her campus jobs because her assailant would always be there and sit in close proximity to her- she would become upset and would be forced to leave. Every time she reported it- Defendant MBU showed deliberate indifference and did nothing.

46. Defendant MBU did not conduct a proper Title IX proceeding and/or investigation and Plaintiff was never provided a copy of any findings to determine if there was any sort of appellate procedure. Plaintiff was not afforded the necessary and proper Title IX procedure she has a constitutional right to receive.

47. Plaintiff struggled in her course work due to the heavy anxiety and depression she faced. This also affected her ability to play volleyball, which was extremely important to her as her volleyball scholarship was how she partially funded her education at MBU. Ultimately, Plaintiff could no longer handle the pressure and at the end of the Spring semester of 2018 she transferred from MBU. However, this transfer came at a great financial hardship for Plaintiff.

48. From the Fall of 2017 to the Spring of 2018 Defendant MBU's actions and omissions as set forth herein contributed to and enabled the abuse and harassment to continue.

49. Upon information and belief, Defendant MBU has engaged in a custom and practice of not documenting public safety calls, suppressing sexual assault/relationship violence and violence grievances, violating Title IX and Equal Protection of Laws, failing to provide reasonable response to abuse and harassment, failing to investigate and correct known harassment, failing to provide appropriate student accommodations, and/or failing to adequately discipline Plaintiff's assailant and other such abusive and harassing students thereby encouraging a culture of sexual violence and creating a hostile educational environment.

COUNT I – VIOLATION OF TITLE IX

Deliberate Indifference

50. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation contained in paragraphs 1 through 49 of this Complaint.

51. The sex-based harassment articulated in Plaintiff's Complaint was so severe, pervasive, and objectively offensive that it deprived Plaintiff of access to educational benefits

provided by MBU.

52. Defendants created and/or subjected Plaintiff to a hostile education 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 abuse, assault, stalking, social media harassment, digital harassment, harassment, and/or sexual assault by another student;
- c. Plaintiff was subjected to harassment based on her sex; and
- d. Plaintiff was subjected to a hostile education 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 assault and harassment and/or defendant had such policies and procedures and failed to follow them.

53. 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 MBU’s education programs in violation of Title IX.

54. After the initial sexual assault by Plaintiff’s assailant, Defendant MBU failed to take immediate, effective remedial steps to resolve the complaint of further sexual harassment, which they had actual knowledge, and instead acted with deliberate indifference toward Plaintiff which ultimately lead to her being subjected to a hostile education environment causing her to transfer schools.

55. 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 expenses as a direct and proximate result of Defendant's deliberate indifference to her rights under Title IX.

COUNT II- NEGLIGENCE

56. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation contained in paragraphs 1 through 55 of this Complaint.

57. Defendant MBU owed Plaintiff, as a resident of the dorms and a student athlete, a duty of reasonable care to protect her from abuse, harassment and criminal conduct on the school premises.

58. Defendant MBU further had an affirmative duty to protect Plaintiff from her assailant's intentional and criminal acts by virtue of its special relationship with Plaintiff, its undertaking, because MBU knew or had reason to know that Plaintiff's assailant was physically, emotionally and/or sexually harassing Plaintiff and would continue to do so, and because MBU knew or had reason to know, from past experience, that there was a likelihood of conduct by Plaintiff's assailant that would encroach Plaintiff's ability to receive an education.

59. The aforesaid occurrences and resulting injuries and damages to Plaintiff were directly and proximately caused or contributed to be caused by the negligence and carelessness and/or deliberate indifference of MBU in at least the following respects, in that:

- a. Defendant MBU failed to use ordinary care to employ adequate security to deter and/or prevent a violent attack such as that against Plaintiff;
- b. Defendant MBU failed to properly hire, train and retain officers, staff and faculty as to proper methods to deal with reports of sexual abuse, investigate same and

accommodate Plaintiff in a manner that would permit her to without undue hinderance, complete her higher education;

- c. Defendant MBU failed to properly and timely report this incident of sexual assault to local law enforcement for proper investigation;
- d. The Defendant MBU failed to provide referral and access to counseling, medical services and/or mental health services to Plaintiff—and upon information and belief throughout the abusive and harassing pattern of which it had notice;
- e. Defendant MBU failed to adequately monitor and supervise departments, including athletic departments, to ensure compliance with protections and standards for sexual assault prevention, reporting and investigation;
- f. Defendant MBU failed to investigate and /or monitor persons accused of sexual assault (Plaintiff's assailant) to ensure additional events did not occur;
- g. Defendant MBU failed to discover, develop and/or implement basic safeguards designed to prevent and/or minimize further sexual harassment once an allegation of sexual assault was reported;
- h. Defendant MBU failed to provide adequate staff, with proper training, to counsel and assist victim Plaintiff of sexual assault;
- i. Defendant MBU failed to adopt and enforce institutional sanctions for sex offenses, both forcible and non-forcible;
- j. Defendant MBU failed to adopt and enforce procedures students should follow if they become sexual assault victims, including who should be contacted, the importance of retaining evidence, and to whom the offense should be reported;

- k. Defendant MBU failed to inform Plaintiff that she has the option of reporting the sexual assault to law enforcement authorities and that she will receive assistance from the institution in the process;
- l. Defendant MBU failed to notify Plaintiff about counseling services and options for changing academic schedules and living arrangements in the wake of a sexual assault;
- m. Defendant MBU was on notice of the serious concerns about Plaintiff's assailant's interactions with Plaintiff and negligibly failed to take proper action to protect Plaintiff from further sexual harassment and the creation of a hostile educational environment;
- n. Defendant MBU failed to implement adequate contact limitations on Plaintiff's assailant with Plaintiff and further failed to adequately enforce any limitation they did set, if any;
- o. Defendant MBU failed to provide referral to victim advocacy and support services either on and/or off-campus;
- p. Defendant MBU failed to provide referral to academic support services and any other services that may be beneficial to the plaintiff;
- q. Defendant MBU failed to adjust the supervisory responsibilities or supervisor reporting responsibilities for Plaintiff;
- r. Defendant MBU failed to alter the on-campus housing assignments of Plaintiff and/or her assailant;
- s. Defendant MBU failed to inform Plaintiff of the right to notify law enforcement authorities of the violation of the court order of protection and further harassment incidents and offer to help facilitate reports;

- t. Defendant MBU failed to suspend, on an interim basis or any basis, from University housing, classes, the University campus/facilities/events and/or all other University activities or privileges for which the assailant might otherwise be eligible, when MBU found, or should have found, and believed or should have reasonably believed from the available information that the presence of the assailant on campus would seriously disrupt the University and constituted a danger to the health, safety, or welfare of Plaintiff and her assailant and other members of the University community;
- u. Defendant MBU failed to provide escort services to assure that Plaintiff could move safely between classes and activities;
- v. Defendant MBU ignored risks presented by Plaintiff's assailant to Plaintiff and the acts and omissions of Defendant MBU herein above show conscious, deliberate indifference, and/or conscious disregard for the safety and welfare of Plaintiff;
- w. Such other acts of negligence as discovery may reveal.

60. As a direct and proximate result of the negligence, carelessness, and/or conscious and deliberate indifference of MBU, Plaintiff sustained injuries and damages, including, great pain of mind and body, physical injury, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; Plaintiff has suffered and continues to suffer spiritually. Additionally, there are numerous monetary damages Plaintiff has suffered as a result of MBU's actions herein.

61. The injuries and damages suffered by Plaintiff are a direct and proximate result of the negligence, carelessness, and/or deliberate indifference of MBU which caused and/or contributed to cause such injuries and damages.

62. Defendant's actions as set forth herein constitute clear and convincing evidence of conscious and deliberate indifference to the safety and rights of Plaintiff such that punitive damages should be assessed.

COUNT III- BREACH OF CONTRACT

63. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation contained in paragraphs 1 through 62 of this Complaint.

64. Plaintiff had valid enforceable contracts with Defendant MBU as an academic enrollee, a scholarship athlete, and also as a resident living in on-campus housing.

65. Defendant MBU breached this contract in failing to provide an adequately safe living and suitable educational environment for Plaintiff free of additional sexual harassment after she had been sexually assaulted on-campus.

66. As a result of these breaches of contract, Plaintiff suffered damages which were foreseeable, and for which recovery is now requested.

ATTORNEYS FEES

67. Plaintiff requests award of her reasonable and necessary attorneys' fees for this action. *See, e.g.*, 42 U.S.C. §§ 1983 & 1988. Plaintiff also requests reasonable and necessary attorneys' fees for their breach of contract claim.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff states that she has been damaged in an amount in excess of seventy-five thousand dollars (\$75,000) and respectfully demands judgment from Defendant MBU for: (a) all monetary and compensatory relief to which she is entitled and will be entitled at the time of trial; (b) punitive damages in an amount designed to punish Defendant MBU and deter it and others from similar conduct in the future; (c) attorneys' fees (see above); (d)

prejudgment and post-judgment interest at the maximum rates allowed by law; (e) all allowable costs of this action; and (f) such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

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