

**UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT
OF OKLAHOMA**

(1) ABIGAIL ROSS,

Plaintiff,

v.

Case No.: 14-CV-484-TCK-PJC

(2) THE UNIVERSITY OF TULSA,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff, Abigail Ross, for her Complaint against the University of Tulsa (“TU”), states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Abigail Ross is a resident of Johnson County, Kansas.
2. Plaintiff is a student at TU.
3. Defendant is an educational institution with its primary campus in Tulsa, Oklahoma.
4. TU receives federal funding and is subject to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a).
5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367.
6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

Plaintiff is sexually assaulted at TU

7. At the time of the sexual assault, Plaintiff was a sophomore at TU and a member of the Delta Gamma sorority. Plaintiff had long dreamed of attending TU as her mother and father had before her.

8. In January of 2014, Plaintiff had recently met another student and member of the TU basketball team, Patrick Swilling, Jr. (“Swilling”) and the two had been occasionally talking and texting with each other prior to the evening of January 27, 2014. The two never had any manner of sexual contact prior to the date in question.

9. On the evening January 27, 2014, Swilling invited Plaintiff to his on-campus apartment to hang out. During their texting over this invitation, Swilling requested Plaintiff to “wear something sexy.” Plaintiff was concerned with the request and asked him to clarify his intentions. Only after Swilling texted back that he was just kidding, did she agree to go and spend time with Swilling. When Plaintiff arrived, they began to watch a basketball game on television.

10. After a short period of time, with Plaintiff seated on Swilling’s bed watching television, Swilling pushed Plaintiff, rolled her over, and grabbed her buttocks. Plaintiff was immediately frightened for her safety as Swilling was much stronger than she was and no one else was in the room.

11. Plaintiff repeatedly pleaded with him to stop but Swilling proceeded to forcibly pull down her pants and insert his fingers into her vagina. Plaintiff continued to plead with Swilling to stop to which he responded by instructing her to “shut up”. Swilling then got on top

of Plaintiff and forcibly raped her with his penis. Plaintiff was crying and continuously asking him to stop. Swilling ignored her pleas.

12. After finishing his assault, Swilling instructed her that “no one is going to know about this, right?” After Plaintiff agreed to not tell anyone, Swilling allowed her to leave, which she did immediately.

13. Once Plaintiff left the room, she texted a close friend that she needed to talk. Her friend did not see the message until the next morning and responded to Plaintiff at that time. Plaintiff, with the help of that friend, reported the rape to the Tulsa Police Department (“Tulsa PD”).

TU’s knowledge of Swilling’s prior sexual misconduct

14. After reporting her assault to the Tulsa PD, the case was assigned to a detective. Within two weeks of opening the investigation, Tulsa PD located and spoke with three additional women who alleged similar sexual misconduct and rape by Swilling, all dating from before Plaintiff ever met Swilling.

15. Tulsa PD first located one of the women who, like Swilling, was a former student at the College of Southern Idaho. This woman reported being raped by Swilling on December 16, 2011, while she and Swilling were both still students at the College of Southern Idaho. Swilling played on the College of Southern Idaho basketball team from where Swilling was eventually recruited to play at TU.

16. On January 6, 2012, this young woman’s mother emailed Steve Gosar (“Gosar”), the men’s basketball coach at the College of Southern Idaho. The mother informed Gosar that Swilling had raped her daughter. Gosar then informed the Athletic Director who notified the Twin Falls Police Department of the reported sexual assault.

17. The investigation of the woman's report revealed the following: the College of Southern Idaho female student reported that she and Swilling were watching TV when Swilling pulled her onto the bed and began grabbing her buttocks and breasts. Swilling then forced himself on top of her while removing her pants. Swilling then vaginally raped her on the bed with his penis despite her numerous pleas for him to stop. After being raped, Swilling told the woman that, "no one will find out about this if you don't tell anyone".

18. In 2012, Danny Manning ("Manning"), the TU men's basketball coach, and his staff, actively recruited Swilling to play basketball at TU. In the course of recruiting of Swilling, Coach Manning had easy access to the information regarding Swilling's rape investigation in Idaho, which was readily available from the College of Southern Idaho, Twin Falls Police Department, and presumably Gosar.

19. On information and belief, despite the accusation of rape by a female student at College of Southern Idaho, TU accepted Swilling to transfer and enroll for the fall semester of 2012 without any further investigation by TU into the matter, and without any conditions imposed on Swilling to ensure that he did not present a threat to the TU community.

20. During the Tulsa PD investigation, the police located a second prior victim. This victim was a former TU student who previously reported being raped by Swilling while at TU. This woman had reported her assault to the TU Department of Security, which conducted no investigation into the report. No action was taken by TU, no disciplinary charges were ever brought, and the matter was kept quiet by TU.

21. As the Tulsa PD investigation continued, the detective uncovered a third prior victim who indicated that she too had been attacked by Swilling. The third victim described the following: that Swilling followed her into a room during a party without her knowledge and

pushed her on the bed. She described that Swilling then attempted to sexually assault her. As she began to scream, other students at the party heard the screams and entered the room and pulled Swilling off of the woman. That woman is identified in the Tulsa PD file. It is unknown who at TU was aware of this woman's report. Similar to the prior incidents, TU never brought charges against Swilling for this attempted sexual assault, and no disciplinary action followed.

22. Despite its knowledge of at least one, and as many as three prior allegations of sexual assault and misconduct perpetrated by Swilling, TU undertook zero investigation of his conduct and permitted Swilling to continue to attend TU.

23. Plaintiff knew nothing about the host of prior reports of sexual violence against Swilling before January 27, 2014.

The deprivation of Plaintiff's educational opportunities

24. Plaintiff reported being raped to TU on February 11, 2014. At the time, she was overwhelmed with the trauma of being raped and was physically afraid of running into her assailant. Fearful of her safety, on February 16, 2014, Plaintiff approached the Department of Security with her concerns and asked if they could issue a no contact order while the disciplinary action was pending. The individuals at the Department of Security refused, telling Plaintiff that TU "doesn't do that here". They assured her that if she needed, they would provide her with an escort around campus if she was fearful of her safety.

25. But the very next day, on February 17, 2014, Plaintiff was at the Collins Fitness Center and became immediately fearful after seeing that Swilling was present. She immediately contacted the TU Department of Security to ask for an escort home. The Department of Security responded to the request by asking her "Can't you just take the shuttle home?" Only after Plaintiff pleaded with the Department of Security, did they reluctantly respond with an escort.

26. After failing to conduct an investigation into her case, TU scheduled a disciplinary hearing on Plaintiff's complaint. TU informed Plaintiff that Swilling's attorney had provided a packet of information that purported to make Plaintiff look sexually promiscuous and not credible. Plaintiff became very concerned and retained counsel. Only after counsel advised TU that proceeding to a hearing without a proper investigation violated Title IX, did the school vacate the hearing date and begin the investigation.

27. The investigation was brief and composed largely of those witnesses coordinated by Swilling and his counsel to suggest that Plaintiff was a promiscuous woman and therefore likely consented to the sexual penetration. Swilling submitted affidavits on behalf of his teammates that were drafted and executed at his attorney's office in support of his argument.

28. Around the week of February 18th, 2014, another member of the basketball team told Plaintiff that head basketball coach Manning had directed the team to cooperate with the efforts of Swilling's lawyer.

29. One of the young men recruited by Swilling to swear out an affidavit refused and subsequently reported to the TU Department of Security that he would not sign the affidavit for Swilling because he felt that Swilling's lawyer was "twisting his words" by attempting to get him to falsely assert that Plaintiff had previously accused him of rape.

30. When TU Department of Security contacted Plaintiff's friends, they were asked questions about Plaintiff's prior sexual history instead of questions about Swilling, the incident, or the relevant facts.

31. On March 6, 2014, Plaintiff's mother and TU alum, Kami Ross, met with Dean Yolanda Taylor ("Taylor", "Dean Taylor") and disclosed to Taylor that Tulsa PD had identified three other women who had reported being victims of similar sexual misconduct by Swilling.

Kami Ross inquired as to whether she could provide Dean Taylor with a copy of the police reports from an out of state incident. In response, Dean Taylor asked, “Oh, you mean [the one] from his parish?” Plaintiff’s mother had no knowledge of an incident in Swilling’s parish in Louisiana, but the remark lead her to believe that Taylor had actual knowledge of yet another incident involving Swilling in Louisiana.

32. At the time of that meeting, Dean Taylor assured Plaintiff that Swilling’s prior sexual misconduct would be a part of the disciplinary hearing.

33. In a phone call between Plaintiff’s mother and Dean Taylor, Taylor indicated that TU’s Department of Security had in fact received a copy of the Twin Falls, Idaho police report.

34. On March 24, 2014, Plaintiff and her mother met with Dean Taylor again to discuss the pending disciplinary hearing. While attending this meeting, Swilling showed up unexpectedly. Plaintiff was so afraid of Swilling that the brief interaction triggered a panic attack, something she had never suffered before, and she was urgently transported and treated at the emergency department at Hillcrest Medical Center.

35. On March 24, 2014, TU held a hearing on the disciplinary matter. None of the prior allegations of sexual misconduct against Swilling were considered, and no other witnesses testified besides Swilling and Plaintiff. Dean Taylor presided over the matter and found in favor of Swilling. Taylor also determined that Swilling would not suffer any consequences whatsoever.

36. Given Swilling’s presence on the small campus, Plaintiff was now terrified of attending TU. Having no further protection, assistance, or accommodation from the school, and knowing that her offender would be allowed to remain on campus without limitation, Plaintiff withdrew from classes.

37. On information and belief, TU, to this date, has not investigated any of the other rape allegations against Swilling.

38. In June of 2014, TU announced that Swilling will continue to attend TU and will now play for the football team this fall.

FIRST CLAIM FOR RELIEF
Violation of Title IX, 20 U.S.C. § 1681(a)
DELIBERATE INDIFFERENCE TO PRIOR SEXUAL VIOLENCE BY SWILLING

39. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

40. TU had actual knowledge of Swilling's prior sexual harassment/rape of female students.

41. TU had actual knowledge of the substantial risk that Swilling would sexually harass other female students at TU.

42. TU officials, with the knowledge described above, had the authority to address the risk posed by Swilling, and had the authority to institute corrective measures.

43. TU's lack of any investigation into the prior allegations of sexual misconduct was clearly unreasonable in light of the known circumstances.

44. TU was deliberately indifferent to the substantial risk that Swilling would sexually harass other female students at TU.

45. As a result of TU's deliberate indifference, Plaintiff was subjected to extreme sexual harassment in the form of rape by Swilling.

46. The sexual harassment that Plaintiff suffered was so severe, pervasive, and objectively offensive that it deprived her of access to educational opportunities and benefits.

47. Plaintiff has suffered damages as a result of TU's violations of Title IX.

SECOND CLAIM FOR RELIEF

Violation of Title IX 20 U.S.C. § 1681(a)

DELIBERATE INDIFFERENCE TO PLAINTIFF'S REPORT OF RAPE

48. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

49. Beginning in January 2014, TU had actual knowledge of Swilling's sexual harassment of Plaintiff in the form of a violent rape inflicted upon her.

50. Additionally, as early as March, 2014, the TU was on notice of multiple other instances of sexual assault and sexual misconduct perpetrated by Swilling.

51. TU deliberately undertook a gender biased investigation of Plaintiff's report of sexual harassment/rape by choosing to investigate Plaintiff's consensual sexual history and refusing to investigate three prior reports of rape alleged to have been committed by Swilling.

52. TU was deliberately indifferent to the multiple accounts of rape and sexual misconduct by failing to investigate any of those prior allegations and by subsequently failing to include or consider evidence of Swilling's serial behavior and by failing to institute any additional disciplinary measures or protective procedures to guard against the risk posed by Swilling.

53. As a result of TU's deliberate indifference, Plaintiff's report was treated in a false light, as an isolated incident, with no eyewitnesses, against a prominent student athlete.

54. Following the predictable result of the disciplinary process, TU made no offer of accommodation or protection for Plaintiff who predictably withdrew from classes.

55. The failure to even investigate any of the previous allegations of rape and sexual misconduct by Swilling for consideration in any disciplinary action is clearly unreasonable under the known circumstances.

56. The sexual harassment that Plaintiff suffered from this hostile environment was so severe, pervasive, and objectively offensive that it effectively barred her access to educational opportunities and benefits.

57. Plaintiff has suffered damages as a result of TU's violations of Title IX.

THIRD CLAIM FOR RELIEF
NEGLIGENCE PER SE

58. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

59. As detailed above, TU violated 20 U.S.C. § 1681 *et seq.* ("Title IX"). Title IX established a statutory standard for parallel common law, reasonable care duties. Plaintiff is included among the class of persons that Congress intended to protect through passage of Title IX. *See Gonzaga University. v. Doe*, 536 U.S. 273, 284 (2002) (citing *Cannon v. University of Chicago*, 441 U.S. 677, 691) ("Title IX of the Education Amendments of 1972 create individual rights because [the] statute[] [is] phrased 'with an unmistakable focus on the benefited class.'").

60. TU's failure to comply with Title IX and the implementing regulations are the direct and proximate cause of the injuries and damages suffered by Plaintiff for which TU is liable under state law consistent with the Oklahoma Supreme Court decision in *Howard v. Zimmer, Inc.*, 299 P.3d 463 (Okla. 2013), 2013 OK 17.

FOURTH CLAIM FOR RELIEF
NEGLIGENCE

61. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

62. TU owed a duty of reasonable care to protect Plaintiff from sexual assault by Swilling, who had a well-documented history of sexual assault at another institution of which TU

either knew or should have known. TU breached its duty by recruiting Swilling to its campus without counseling, supervision or monitoring of his behaviors. By recruiting Swilling to campus, it was reasonably foreseeable that TU would expose its female students to his conduct and behaviors, and TU either knew or should have known that Swilling's conduct and behaviors included a documented history of sexual assault. As a direct and proximate result of TU's decision to admit Swilling without supervision, counseling or monitoring, Plaintiff suffered damages and injuries for which TU is liable under state law.

63. Interaction between Swilling and female students like Plaintiff who attend TU was reasonably foreseeable as evidenced by, among other things, TU's operation and control over an extensive PanHellenic organization that facilitates and promotes contact between its female students and male student athletes that TU actively recruited to campus. Membership in a TU-sponsored PanHellenic organization is extensively regulated and monitored by TU to include lengthy membership applications, contractual obligations, payment of fees, and physical and verbal limitations on member-recruit conduct. Through its PanHellenic organization, TU actively encourages its female students "*to be involved in other organizations and activities on campus outside of the Greek system,*" including activities sponsored by the NCAA. These regulations further evidence the ability and extent to which TU exercises control over its student body.

64. TU owed a duty of reasonable care to protect Plaintiff from sexual assault once TU had actual knowledge that another female student had accused Swilling of sexual assault on its campus. TU breached its duty by either failing or refusing to implement adequate corrective measures to address Swilling's behaviors, and by facilitating further contact between Swilling and its female students by allowing him to remain on campus. As a direct and proximate result

of TU's failure or refusal to reasonably respond to prior allegations of sexual assault against Swilling, Plaintiff suffered damages and injuries for which TU is liable under state law.

FIFTH CLAIM FOR RELIEF
NEGLIGENT SUPERVISION

65. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

66. At the time Swilling sexually assaulted Plaintiff, TU had actual knowledge of at least one prior allegation that Swilling sexually assaulted another female student on the TU campus, and it either knew or should have known of at least one prior allegation of sexual assault against Swilling from a previous institution, and it either knew or should have known of a third allegation of sexual assault by another TU student.

67. The information possessed by TU at the time Swilling sexually assaulted Plaintiff was sufficient to give it reason to believe that Swilling would create an undue risk of harm to other female students. Despite the knowledge possessed by TU, it either failed or refused to implement reasonable measures to adequately supervise Swilling. As a direct and proximate result of TU's failure or refusal to adequately supervise Swilling, Plaintiff suffered injuries and damages for which TU is liable under state law.

SIXTH CLAIM FOR RELIEF
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

68. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

69. University of Tulsa actively recruited Swilling to its campus. When TU admitted Swilling, it either had actual knowledge of a prior sexual assault allegation against him, or it

deliberately refused to adequately investigate his background to determine whether he posed a risk of sexual assault to its female students.

70. Once TU had recruited and admitted Swilling and invited him to its campus, TU encouraged unwitting female students to engage and participate in campus activities, including events sponsored by the NCAA. Through these events and others, TU encouraged and promoted contact and interaction between Swilling and its female students.

71. After TU enrolled Swilling, a female student advised TU that Swilling had sexually assaulted her. Despite actual knowledge of this allegation, TU did not perform an investigation reasonably designed to determine the veracity of the allegation. TU took no action against Swilling, and continued to expose female students to the threat he presented without supervision or restriction. The failure or refusal to reasonably investigate the allegations of sexual assault provides clear discouragement to other potential victims of sexual assault, while simultaneously encouraging the perpetrator's behavior.

72. As detailed above, TU owed a duty of reasonable care to protect Plaintiff from sexual assault by Swilling, and its permissive attitude towards sexual assault against women allowed TU to repeatedly expose its students, including Plaintiff, to assaults by Swilling. No civilized society would condone institutional conduct that either tacitly permits serial sexual assaults against female students, or alternatively, turns a blind eye to the consequences of implementing a system that fails to credibly address and respond to allegations of sexual assault.

73. As a direct and proximate result of the extreme, outrageous, and reckless conduct detailed above, Plaintiff suffered substantial physical and psychological trauma associated with physical injury inherent in forcible rape at the hands of Swilling. Plaintiff was forced to re-experience the rape and trauma on numerous occasions throughout the disciplinary process and

her campus experience, and because the disciplinary process is not adequately designed to credibly respond to allegations of sexual assault, its findings rest upon material obtained through suspect means that support an inference of witness and evidence tampering, which, in turn, caused Plaintiff to suffer the additional insults and injuries associated with victim-blaming, for which TU is liable under state law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks a judgment against TU as follows:

A. An Order enjoining TU, along with all of its agents, employees, and those acting in concert therewith, from unlawful discrimination on the basis of sex, including the failure to address, prevent, and/or remedy sexual harassment;

B. Injunctive relief requiring TU to redress its violations of Title IX, including (1) instituting, with the assistance of outside experts, and enforcing a comprehensive sexual harassment policy, including procedures for effective reporting of sexual harassment incidents, an effective and immediate crisis response, and an expanded victim assistance and protection program; (2) adopting a “zero tolerance policy” under which there will be expedited proceedings and punishment proportional to the offense for violation of sexual harassment policies; and (3) providing for an annual, independent review by the Office of the President, with the participation of outside reviewers, of Athletic Department compliance with the sexual harassment and recruiting policies;

C. An award of damages in an amount to be established at trial, including, without limitation, reimbursement and prepayment for all of Plaintiff’s tuition or related expenses; payment of Plaintiff’s expenses incurred as a consequence of the sexual assault; damages for deprivation of equal access to the educational benefits and opportunities provided by TU; and

damages for past, present, and future emotional pain and suffering, ongoing and severe mental anguish, and loss of past, present, and future enjoyment of life;

- D. An award of pre- and post-judgment interest;
- E. An award of costs and attorney fees, pursuant to 42 U.S.C. § 1988(b); and
- F. Such other relief as is just and equitable.

Plaintiff demands a trial by jury of all issues so triable.

DATED 08/18/2014.

Respectfully submitted,

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