

COMMONWEALTH OF KENTUCKY
CAMPBELL CIRCUIT COURT
DIVISION _____
CASE NO. _____

JANE DOE, proceeding under a pseudonym

PLAINTIFF

v.

NORTHERN KENTUCKY UNIVERSITY
Nunn Drive
Highland Heights, KY 41099

DEFENDANTS

and

GEOFFREY S. MEARNS
Northern Kentucky University
Nunn Drive
800 Lucas Administrative Center
Highland Heights, KY 41099

and

LES KACHUREK
Chief of Police
Northern Kentucky University
Police Department
415 Old John's Hill Road
Highland Heights, KY 41099

and

KATHLEEN ROBERTS
Northern Kentucky University
Nunn Drive
834 Lucas Administrative Center
Highland Heights, KY 41099

and

ANN JAMES
Senior Associate Dean of Students
Deputy Title IX Coordinator
Northern Kentucky University
Nunn Drive
832 Lucas Administrative Center
Highland Heights, KY 41099

**COMPLAINT
(WITH JURY DEMAND)**

Plaintiff, Jane Doe (“Doe”),¹ for her complaint against Northern Kentucky University, Geoffrey S. Mearns, Les Kachurek, Kathleen Roberts, and Ann James (“Defendants”), alleges as follows:

**PARTIES
(Jurisdiction and Venue)**

1. This action arises under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681-1688 (herein after “Title IX”) arising out of occurrences involving a sexual assault and the subsequent actions of the university and the individual Defendants, and under other federal and state claims.

2. Doe is a citizen of the State of Ohio and currently resides in Highland Heights, Kentucky, and is a student at Northern Kentucky University.

3. Defendant Northern Kentucky University is an educational institution and public university of the Commonwealth of Kentucky. The primary campus is located in Campbell County, Kentucky.

4. Defendant Northern Kentucky University receives federal funding and financial assistance within the meaning of 20 U.S.C. § 1681(a) and is otherwise subject to Title IX,

¹ Plaintiff proceeds here under pseudonym consistent with other courts’ treatment of party names in highly sensitive sexual assault cases that arise under Title IX of the Education Amendments, see E.G. Doe v. Erskine College, 2006 WL1473853 (DSC, May 25, 2006), and to protect the privacy, safety, and educational opportunities of Plaintiff. Defendants are aware of the identity of the Plaintiff and will not otherwise be prejudiced by proceeding in this fashion.

5. Defendant Geoffrey S. Mearns is the President of Defendant Northern Kentucky University, and upon information and belief, resides in Fort Thomas, Kentucky.

6. Defendant Les Kachurek is the Police Chief of Defendant Northern Kentucky University.

7. Kathleen Roberts is the Title IX Coordinator of Defendant Northern Kentucky University.

FACTS

8. This Court has subject matter jurisdiction of all claims contained herein.

9. Venue is proper in Campbell County in that one or more Defendants reside and/or are located in Campbell County, Kentucky.

10. Doe graduated from a local Ohio high school with honors. She applied to 14 colleges and universities and received scholarships from all. Entering Northern Kentucky University, she was a superb student.

11. Doe accepted a full scholarship at Northern Kentucky University and started in August of 2013. She came to Northern Kentucky University because in spite of receiving scholarships from the University of Dayton and other fine institutions, her parents did not have the finances to send her elsewhere.

12. At no time did anyone on campus inform her or her parents about sexual assaults on NKU's campus, nor was she made aware of its dated policies and procedures regarding the subject.

13. In the fall semester of 2013, Doe was assaulted and raped by a Northern Kentucky University student.

14. After seeing her daughter come home weekend after weekend, withdrawn and distraught, Doe's mother was finally able to convince Doe to tell her what was wrong. Doe was hurt, anxious, embarrassed, and frightened to tell anyone. The assault was very brutal.

15. It was reported to the university through counseling services, and that office brought her to Ann James. James inquired as to what happened, and both James and Gabby Molony, when asked by Doe which avenue would be best, advised her to keep what happened through the "university system," rather than going to the police.

16. Universities throughout the United States, including Northern Kentucky University, have advised students to stay within their inadequate systems of handling sexual assault matters, universities seek to avoid negative publicity which might affect their admissions. This effort to steer students into a defective or inadequate system of handling these matters, without full disclosure, shows complete and intentional indifference to the victims of sexual assault. No one did anything substantive about her pleas for help after being harassed and intimidated after a three person panel rule in her favor, thus holding that her version of what happened relating to the rape was correct.

17. On NKU's website, women who are molested, raped, or attacked are told that "Survivors of sexual assault are not required to contact the police or file an administrative complaint, but are highly encouraged to reach out to the Norse Violence Prevention center to discuss their options and receive support."

18. A panel was convened and heard from both Doe and her attacker. The panel's findings were that it was more probable than not that she was telling the truth. Thus, this Northern Kentucky University panel believed that she had been assaulted as she described.

19. Even after this finding, Northern Kentucky University did next to nothing to protect Doe from further anxiety and harassment. This, too, is evidence that the entire process at Northern Kentucky University is a sham.

20. Doe was told that her attacker would be punished as a result of this hearing. Because of that, she was falsely induced into believing that there would be no need for an appeal.

21. The “punishment” meted out to the person committing the assault was as if he was found guilty of jaywalking. He was suspended “in abeyance,” meaning no suspension at all. He was supposed to be banned from the student housing complex, but despite numerous complaints from Doe that he was constantly in and around her dorm and in the housing complex, nothing was done of any substance. This further added to her anxiety and fear, because Northern Kentucky University was not doing what it said it promised. And it got worse.

22. The attacker was assigned to a cafeteria different from Doe. Northern Kentucky University subsequently closed the cafeteria. Without any warning to Doe, the university transferred him to her assigned cafeteria, where he would walk all around her, intimidating her, and causing her to have anxiety attacks, including inability to sleep and PTSD. When Doe approached Ann James about why they did what they did without telling her, her response was that they would “talk to him about it.” There was no valid explanation as to why she had to be subjected to this, nor was there an explanation as to why she was not informed.

23. After that, the attacker was constantly given permission to go anywhere around campus. Doe was told to “simply look out” for him in order to avoid him. Thus, once again, Defendant James and others showed complete and intentional indifference to the plight of Doe.

24. The attacker was supposed to be from the Northern Kentucky University housing complex area, yet he asked for and received numerous “notices of permission” to enter into areas

where the university and other Defendants knew she would encounter him. For instance, there was plausible suspicion the attacker was visiting Doe's dormitory sometime during the 2014 Thanksgiving break without any notice of permission. When Northern Kentucky University and the Defendants were notified of this matter, no investigation was done to determine whether the so-called sanctions were violated.

25. Northern Kentucky University made no effort to monitor who was coming into her dorm. There is no means of tracking guests. Although they knew Doe had been assaulted, NKU personnel knew a door to her dorm was broken for an entire year, and in spite of numerous complaints from women, no one cared to fix it.

26. One evening at the cafeteria, after her attacker began to intimidate her, a friend of Doe called the Northern Kentucky University police and told a Northern Kentucky University employee about what was taking place. When the police arrived, they had no idea whatsoever about the history between these two students. Incredibly, no one in the administration had notified campus police about her attack, the identity of her attacker, and the result of the hearing. Instead, the police told her that if she did not have a restraining order, they would do nothing. And that is precisely what they did—nothing.

27. Northern Kentucky University knew that her attacker was dating a woman who lived in her dorm on the same floor, and the room right across the hall from Doe. That woman and her roommate harassed Doe creating fear of further retaliation and harm. This harassment was also reported to Ann James and the Resident Assistants, yet little was done about this either.

28. A no contact order was in place. In other words, the attacker was prohibited from contacting her. In May of 2015, the attacker contacted her via social media. Once again, this was brought to the attention of Ann James, and once again she did nothing.

29. The attacker was supposed to have semester meetings with Ann James. The attacker's sanctions were not communicated effectively, which violated representations made to Doe.

30. Due to the complete and intentional indifference on the part of Ann James and the legal department, Doe, her mother and father, set up a meeting with President Geoffrey S. Mearns after the social media contact. In that meeting was Geoffrey S. Mearns, Ann James, Kim Turner (Vice President of Student Affairs), and Jamie McCauley, a professor very upset about what was happening to Doe. Besides her parents, Doe's sister attended as well. It was plainly evident very early on in this meeting that Mr. Mearns was completely disengaged. Mearns treated Doe and her family with complete indifference. When questioned about why the attacker received virtually no penalty for his actions, and why he kept violating his so-called sanctions with no penalty, Mearns would respond by saying "How are your grades?" and "What is your major?"

31. Mearns and others were told that the attacker was given a job at the gym, which meant that Doe could not go to the gym without fear of seeing him. Again, these Defendants showed absolute and intentional indifference to Doe in permitting the attacker to work at this job. Further, placing someone in this position, near a women's locker room, after a panel believed that it was more likely than not that he committed a violent act, is once again a measure of just how little this university and its officials, including these Defendants, care about women in general.

32. Throughout this time period, Doe was consistently told by Ann James and Kathleen Roberts that "We have to consider his rights as well."

33. Doe and her parents also met with Kathleen Roberts, the Title IX officer on campus. By the very nature of her title, her job was to be vigilant in protecting the wellbeing of female students, especially those who have been victimized on campus. When asked by Doe and her parents why the university refused to follow up and live by the promises made to Doe in exchange for staying within their system, Ms. Roberts repeatedly responded with the same refrain “I’m only here to listen.” Each time Doe and her parents would ask a question of Ms. Roberts, she would repeat the same refrain “I’m only here to listen.”

34. In September of 2015, Doe decided to do something about the outrageous treatment she received from the individuals mentioned above. Exercising her First Amendment rights to protest, Doe took part in a protest on campus, to bring to light the plight of abused women at Northern Kentucky University. Many others joined the protest, including faculty members. It was peaceful until the Northern Kentucky University police arrived, with dogs in tow. When women would address the crowd with their stories, the police mocked them with laughter.

35. The Police Chief, Les Kachurek, sent an e-mail that was distributed to faculty and staff. It also went to Northern Kentucky University students.

36. The e-mail sent by Defendant Kachurek, the Police Chief of NKU, described what Doe was doing as her “way of expressing her displeasure over the outcome of an administrative hearing, where she accused a male student of sexually assaulting her.” The e-mail failed to mention the outcome of the hearing; that is, that the accused student was found responsible for “non-consensual sexual intercourse.” The e-mail also attacked and further harassed Doe by stating that she was “publicly slandering” her perpetrator without providing any context for such an accusation. In other words, the Police Chief was interfering with First Amendment rights, and

accusing her falsely. In that same e-mail, Doe was threatened with police action if she would “violate statutory local level laws” or commit “criminal and nuisance offenses.”

37. The Police Chief’s action not only showed intentional indifference, but an utter disdain for Doe.

38. The Police Chief remains in the employ of Northern Kentucky University today, in spite of what he did.

39. The Professional Concerns Committee of Northern Kentucky University met on October 1, 2015, and after discussing the various statements made by Police Chief Kachurek about Doe and the protest, passed a motion, saying that a Title IX complaint regarding the Chief’s public statements about Doe should be filed by or on behalf of the Committee or Faculty Senate. The vote was passed without a single dissent.

40. As further evidence of complete indifference to Doe, the no contact order between the attacker and Doe was consistently neglected and not enforced.

41. The no contact order has been significantly and repeatedly violated, with little to no action taken on the part of the Defendants.

42. In August of 2015, Doe paid a fee to move into her dorm early. When the official move-in days were underway, much to her amazement, her attacker was helping people move into the adjacent dormitories, moving about freely. When Doe complained to the university, she was told that his sanctions were amended again and that he was allowed to ask permission to be in the residential village. In addition, her attacker claimed he believed his sanctions to be discontinued at the conclusion of the Spring 2015 semester—just months before his appearance at the Fall 2015 move-in days.

43. Over the course of 2015, Doe received repeated e-mails wherein the attacker was given constant permission to circumvent his sanctions.

44. Doe feels that her safety is threatened, has isolated herself, has panic attacks, and general anxiety when moving about campus due to the actions and inaction of the Defendants.

45. The Defendants have permitted the attacker to become President of his fraternity. This after the panel found that it was more probable than not that he committed a sexual assault.

46. In yet a further attempt to harass and intimidate Doe, outside counsel hired by Northern Kentucky University stated that NKU has “reduced the potential for even incidental contact between [Doe] and her attacker.” Further the university, through its Lexington lawyers, threatened Doe that if she were to file a lawsuit, the university will expose “all records related to this incident in support of its defense.” The incident, of course, is the rape itself. Thus, the university has once again threatened, intimidated, and harassed Doe in retaliation for attempting to assert her rights under federal and state law.

47. As a result of Defendants’ actions, Doe has been a victim of exclusion of educational programs or activities. The actions of the Defendants so undermines and detracts from Doe’s educational experience as to effectively deny her equal access to NKU’s resources and opportunities, and has had a concrete negative effect on Doe’s ability to participate in college activities.

48. These constant allowances of relief of the so-called sanction since the incident all the way up to just a month or two ago is yet another way that these Defendants have shown deliberate indifference to Doe.

COUNT I
(Title IX)

49. Doe incorporates by reference the allegations stated above as if fully set forth herein.

50. Doe was subjected to physical and sexual harassment, sexual assault, sexual discrimination and retaliation that was severe, pervasive, and objectively offensive, which denied her educational opportunities and benefits.

51. NKU has become a sexual hostile environment for Doe when her attacker, who was found “responsible” at the administrative hearing, was supposed to be sanctioned, but those sanctions are illusory in that NKU has allowed to move around campus freely, become the President of a fraternity, and constantly circumvent his sanctions, leading to inevitable encounters with Doe.

52. Northern Kentucky University has been deliberately indifferent to Doe’s plight, including her harassment in this sexually hostile environment in which she has suffered as a result of NKU’s abject failure to properly sanction and enforce those sanctions against the attacker.

53. As a result of NKU’s deliberate indifference, Doe was forced to see her attacker on a regular basis and felt so unsafe that she left campus often, losing educational and social opportunities at the university.

54. Due to the deliberate failures on the part of Northern Kentucky University, Doe suffered a loss of educational opportunities and benefits, along with injuries, damages, and losses, including but not limited to, damage to her pursuit of higher education, fear, anxiety, trauma, and emotional distress.

55. As a result, Doe has been damaged in an amount to be proven at trial, in excess of the jurisdiction of this Court, including attorneys fees and costs.

COUNT II
(Title IX Retaliation)

56. Doe incorporates by reference the allegations stated above as if fully set forth herein.

57. In an attempt to bring to the attention of NKU its horrible treatment, Doe has complained to numerous officials at the university.

58. Doe has been threatened by outside counsel hired on behalf of the Defendants.

59. Doe was advised in writing that if she brought legal action, that all of her records relating to her assault will be exposed and made public, thus threatening her with exposing the details and trauma of the attack, her statements at the hearing, and the aftermath. This was done to embarrass and humiliate her, and in retaliation for threatening to exercise her rights. This outrageous threat, made by a Lexington lawyer on behalf of NKU, was a not so veiled threat to embarrass and humiliate a women who NKU's panel found was more likely than not attacked and sexually molested by her attacker. NKU has retaliated with this letter and threat knowing exactly of what Doe is complaining, which is the broken promises made by the university, and the breach of fiduciary duty.

60. At the time of these threats, NKU was aware of the complaints made by Doe stemmed from Defendants taking this matter into its system, and then refusing to live up to the representations made to protect Doe from harassment and a hostile environment by allowing her attacker to have virtually no sanctions, full access to the campus, permitting him to become president of a fraternity, and placing him in a job that prevents Doe from enjoying certain aspects

of the university, facts the university is evidently so desperate to keep secret that it finds no harm in continuing to inflict damage upon her.

61. As a result of this retaliation, NKU, through its legal department and/or upper level management, has not only shown deliberate indifference to Doe, but has intentionally harassed and retaliated against her for attempting to invoke her rights under law.

62. As a result, Doe has been damaged in an amount to be proven at trial, in excess of the jurisdiction of this Court, including attorneys fees and costs.

COUNT III
(Title IX Retaliation)

63. Doe incorporates by reference the allegations stated above as if fully set forth herein.

64. After Doe made numerous complaints to the Defendants and other employees of Northern Kentucky University, Doe was retaliated against by its Police Chief.

65. In this e-mail, the Police Chief stated in part as follows:

Please be advised that NKU's Division of Student Affairs has notified me of a protest on campus. Today, a female student has been seen on campus carrying a mattress on her back. Ostensibly, this is her way of expressing her displeasure over the outcome of an administrative hearing, where she accused a male student of sexually assaulting her more than a year ago. Moreover, she has been publicly slandering the male student.

66. At the time he sent this e-mail, the Police Chief knew or should have known what took place in the past, and that you cannot slander anyone when you tell the truth. Further, according to Northern Kentucky University's policies and procedures, Doe prevailed at that hearing when she and her attacker presented their case to that three person panel.

67. Further, the Police Chief retaliated by making veiled threats by stating "...she is not authorized to violate statutory or local-level laws. Thus, obvious criminal or nuisance offenses are enforceable."

68. Further, by spreading this e-mail around campus which reached numerous students and faculty members, the Police Chief made a veiled threat to all those who may be sympathetic to Doe by further stating "...as police, *absent a legal and probative basis*, we are prohibited from: initiating contact with her; photographing her; videotaping her; documenting her name and the names of any other protestors; photographing motor vehicles involved in the protest; documenting license plate numbers of vehicles involved in the protest; and making protestor-related motor vehicle registration and driver's license inquiries." Obviously, this is something that any rookie policeman hired by NKU should know, and thus this e-mail was not only a deliberate attack on Doe in retaliation for exercising her First Amendment rights, but a threat against anyone who wished to join her in support that if the police felt they had a "probative basis," faculty, staff, and students could or would be photographed, videotaped, and stopped to produce registrations and driver's licenses, along with being "documented."

69. Defendant Mearns stated that by writing and sending this e-mail, the Chief was "well intended."

70. These acts of retaliation violate Title IX.

71. As a result, Doe has been damaged in an amount to be proven at trial, in excess of the jurisdiction of this Court, including attorneys fees and costs.

COUNT IV
(42 U.S.C. § 1983 First Amendment)

72. Doe incorporates by reference the allegations stated above as if fully set forth herein.

73. The First and Fourteenth Amendments extend to campuses of state colleges and universities.

74. The actions of the Defendants interfered with the First Amendment rights of Doe in violation of her civil rights.

75. Upon information and belief, no disciplinary action was taken against the Police Chief for this despicable, threatening and inaccurate e-mail. Roberts and James took no action, and obviously failed to properly inform the Police Chief of the correct facts.

76. In an e-mail, President Mearns called the Police Chief's e-mail message "well intended." All Defendants have a duty to promulgate, establish, publish, and insure that the policies and procedures of the university conform to and are consistent with the Constitution of the United States and federal, state, and local law, and regulations promulgated thereunder. Roberts, James, Mearns, and Kachurek have a further duty to establish and enforce rules and procedures within the university structure, departments, and personnel policies, consistent with and in furtherance of protecting the rights and provisions enunciated above. Defendants knew, or should have known, of their responsibilities under provisions above stated. Roberts and James in particular, in a callous and wanton disregard of their obligations, have failed to perform their obligations (including these expressly stated to Doe). Having expressly contracted with Doe, guaranteeing her specific protections, and thereafter abrogating their express agreement, all of the Defendants deprived Doe of her rights under 42 U.S.C. § 1981.

77. The acts of the Defendants were undertaken under the color of state law.

78. By bringing police and dogs to a peaceful demonstration and gathering, and then publishing a threatening e-mail, Defendants have explicitly and implicitly chilled Doe's free expression.

79. The First Amendment forbids the government from censoring speech based upon "personal predilections."

80. Defendants Kachurek and Mearns violated a clearly established constitutional right of which all college administrators and staff should have known, rendering them liable to Doe under 42 U.S.C. § 1983.

81. The denial of constitutional rights is irreparable injury *per se*, and Doe has experienced injury as a consequence of being denied her rights.

82. Because Defendants' actions constituted a callous disregard of established rights, Doe is entitled to an award of punitive damages against the Defendants for violating her rights protected by the First Amendment.

83. As a result, Doe has been damaged in an amount to be proven at trial, including punitive damages, reasonable costs and attorneys fees.

COUNT V
(Breach of Fiduciary Duty)

84. Doe incorporates by reference the allegations stated above as if fully set forth herein.

85. When agreeing to care for, protect, and support "survivors of sexual assault," the university agrees to act in a fiduciary capacity towards these victims, including Doe.

86. The Defendants agreed to care and protect Doe by imposing sanctions against the attacker, and promising to enforce those sanctions and protect her. Further, Defendants NKU, James, and Roberts encouraged Doe to trust and rely upon the university's system. Doe relied upon and was dependent on these Defendants to provide the security and safety they promised. Doe was in a highly vulnerable situation, and was relying on Defendants, who had a duty to follow the law and care for her, and keep the promises made by them and on behalf of the university.

87. The Defendants had a fiduciary duty to create an environment for Doe that allowed her not to be threatened, intimidated, and harassed from her attacker and the Police Chief and his officers.

88. Given the promises made to Doe and in reliance on those promises regarding the process, Doe relied on NKU to act in good faith and with due regard to her interest.

89. Defendants violated that confidence and fiduciary duty.

90. As a result of the Defendants' violation of fiduciary duty, Doe has been damaged in an amount to be proven at trial, including punitive damages, costs and attorneys fees.

COUNT VI
(Title IX—Actions of Katherine Roberts)

91. Doe incorporates by reference the allegations stated above as if fully set forth herein.

92. As an institution receiving federal funds, NKU was mandated to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX.

93. That person was Kathleen Roberts.

94. A Title IX officer must enforce the law and carry out procedures to create and maintain a supportive, equitable, and safe environment, especially to victims of sexual assault. Roberts failed these duties miserably.

95. Ms. Roberts exhibited intentional indifference on a number of occasions, including the meeting with Doe and her parents, when instead of performing her duties as mandated by Title IX, she simply stated "I'm merely a sounding board."

96. Criteria created by governmental agencies and educators mandate that a Title IX Officer must do more than just listen in situations regarding the aftermath of a sexual assault.

97. Ms. Roberts' actions violation Title IX.

98. Doe has been damaged in an amount to be proven at trial, including attorneys fees and costs.

COUNT VII

99. Doe incorporates by reference the allegations stated above as if fully set forth herein.

100. An actual controversy has arisen and now exists between Doe and Defendants Mearns, Kachurek, Roberts, and James concerning Doe's rights under the United States Constitution.

101. Doe desires a judicial determination of her rights against these Defendants as they pertain to Doe's right to speak without being subject to harassment and threats.

102. To prevent further violation of Doe's constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment issue declaring the actions of Defendants unconstitutional.

COUNT VIII

103. Doe incorporates by reference the allegations stated above as if fully set forth herein.

104. Defendants' actions towards Doe amount to oppression and/or malice, in violation of KRS 411.184.

105. As a result of Defendants' actions, Doe is entitled to punitive damages.

WHEREFORE, Doe prays for relief as follows:

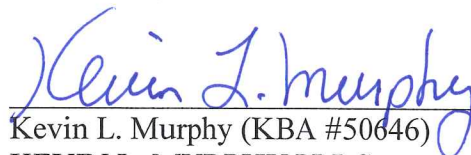
- A. For compensatory damages in an amount to be proven at trial, in excess of the jurisdiction of this Court;
- B. For punitive damages for violating Doe's rights protected by the First and Fourteenth Amendments, and for violation of Kentucky law;

- C. For statutory attorneys fees and costs;
- D. For a declaratory judgment; and,
- E. Any and all other relief to which Doe appears to be entitled.

JURY DEMAND

Doe hereby demands a trial by jury.

Respectfully submitted,



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