

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CLERK'S OFFICE  
U.S. DISTRICT COURT  
Atlanta

NOV 22 2004

LUTHER [Signature] Clerk  
Deputy Clerk

JANE DOE, )  
)  
Plaintiff, )  
)  
v. )  
)  
BERRY COLLEGE, and )  
)  
MARCUS SANDELOWSKY, )  
)  
Defendants. )  
\_\_\_\_\_ )

CIVIL ACTION NO.  
**1:04-CV-3420**  
JURY TRIAL DEMANDED

**COMPLAINT FOR DAMAGES**

COMES NOW, Plaintiff, by and through undersigned counsel, and files this her Complaint For Damages, and pursuant to Fed.R.Civ.P.7 and Fed.R.Civ.P. 8(a)(1), sets forth her claims for relief as follows:

**JURISDICTION**

1.

The basis of jurisdiction is 28 U.S.C. § 1337, which confers jurisdiction of actions arising under acts of Congress, regulating commerce in the District Court of the United States. Plaintiff also invokes this court's pendant jurisdiction to hear Plaintiff's state law claims. This action is brought pursuant to Title IX of the Education Acts of 1972, as amended, 20 U.S.C. § 1681(a), *et seq.* and for claims arising out of state common law.

## **VENUE**

2.

Venue is based upon 28 U.S.C. § 1391(b). All of the parties are residents of the State of Georgia. Sandelowsky resides in Fulton County, Georgia. Berry resides in Floyd County, Georgia. Venue is appropriate in this Court.

## **PARTIES**

3.

At all times concerned, plaintiff (“Doe”) was a full-time matriculating student at Defendant Berry College.

4.

Defendant Berry College (“Berry”) is a school of higher education with its main office located in Floyd County, Georgia. Defendant Berry College is a recipient of federal funds.

5.

Defendant Marcus Sandelowsky (“Sandelowsky”) resides in Fulton County, Georgia. At all times relevant, Defendant Sandelowsky was a full-time matriculating student at Defendant Berry College.

## SUBSTANTIVE ALLEGATIONS

6.

Berry College owns the real property known as Berry College located in Floyd County, Georgia (hereinafter the “Premises”) upon which its school and residence halls reside.

7.

Berry provides on-campus housing to its students and its freshman students are required to reside on campus.

8.

As a college, Berry creates a concentration of young people on its campus.

9.

Students come to college not fully prepared for the freedoms of an adult life without the continued active intervention of family and the active guidance of the university.

10.

Because students are living on their own for the first time and there are large concentrations of young men and women in densely populated forms, it is more likely that crimes, particularly sexual assault, will occur on the college campus.

11.

Authoritative studies have shown that one in four college women are the victim of sexual assault or attempted rape while in college.

12.

Authoritative studies have further found that of the sexual assaults that occur on campus, 80-90% occur between acquaintances.

13.

It is foreseeable that sexual assault occurs on campus to young college women.

14.

Acquaintance rape on college campuses is preventable.

15.

Berry promises safety and security to its students.

16.

Berry maintains a force of state-certified police officers, who are on duty 24 hours a day, seven days a week.

17.

Berry takes actions to ensure safety on its campus.

18.

Berry takes actions to protect its students from sexual assault.

19.

Because of the affirmative steps Berry takes to ensure safety to its students, Berry must ensure the safety of its students in a non-negligent manner.

20.

In the fall 2001 semester, Berry matriculated Marcus Sandelowsky and required that he live on campus with female students.

21.

In fall 2001, Berry received a complaint from Jane Doe that Sandelowsky had sexually assaulted her.

22.

Doe complained to Berry police, who referred her to Dean Carol Willis.

23.

Doe complained to Dean Carol Willis about Sandelowsky, however, Berry chose to take no remedial action.

24.

Sandelowsky continued to sexually harass, stalk and assault Doe.

25.

Doe's roommates complained to Berry on multiple occasions that Sandelowsky was continuing to harass Doe. Berry took no action against Sandelowsky.

26.

A group of parents and students met several times with Berry, by and through Dean Willis, to complain that Sandelowsky continued to harass, stalk and intimidate Doe. No action was taken against Sandelowsky.

27.

Despite the multitude of complaints against Sandelowsky, Berry allowed Sandelowsky to continue to harass, stalk and assault Doe through 2001-2002. Doe left school in the Spring 2003 semester to study abroad.

28.

During the Spring 2003 semester, Sandelowsky raped another Berry student. Thereafter, Sandelowsky began stalking and harassing this second Berry female student, Doe2.

29.

That semester, Doe2 complained to Berry that Sandelowsky was harassing her and obtained a restraining order against him from Berry. Berry took no actions to enforce the restraining order, nor did Berry officials

inform its police that Doe2 had obtained a restraining order against Sandelowsky. Sandelowsky continued to intimidate and harass Doe2.

30.

Sandelowsky also began sexually harassing another student, Doe3. Sandelowsky attempted to rape Doe3, but was unsuccessful in penetrating her. Thereafter, Sandelowsky began a pattern of harassment and abuse against Doe3 at Berry. Doe3 complained multiple times to Berry about Sandelowsky.

31.

Despite all the complaints, Berry chose to employ Sandelowsky in its financial aid office and allow him access to the student's private records. Using the information found in that office, Sandelowsky revealed personal financial information about Doe, Doe2 and Doe3 to others. Moreover, Sandelowsky used the information in the financial aid office to track down Plaintiff when she returned from abroad.

32.

In the face of a vast multitude of complaints against Sandelowsky for violations of its policies, sexual assault and sexual harassment throughout 2001-2003, rather than take remedial actions, Berry chose to allow Sandelowsky to continue as a Berry student.

33.

In February 2004, Sandelowsky brutally attacked, battered, tortured and raped Plaintiff.

34.

In April 2004, Doe2 and Doe3 learned about each other and of Plaintiff. Doe2 and Doe3 approached Plaintiff and asked that she work with them to force the school to take steps against Sandelowsky. Plaintiff agreed and the three students forced Berry to hold a disciplinary hearing against Sandelowsky.

35.

Because Berry did not have any policies prohibiting sexual assault on its campus, the students asserted that Sandelowsky had violated the school's sexual harassment policy. Berry held a disciplinary hearing between Sandelowsky and the students.

36.

Despite the students' assertions that they were in fear of Sandelowsky and that he had brutally attacked each of them, Berry held a nine hour hearing and required that the female students remain in the room with their

attacker for the entire nine hours and answer Sandelowsky's questions to them directly. The students were not permitted to have a legal representative to assist them, nor did anyone prohibit Sandelowsky from asking irrelevant and immaterial questions.

37.

Sandelowsky questioned each of the students for hours about their sexual history, their medical history and continued his pattern of abuse against the students in front of a panel of Berry faculty, staff and students.

38.

Berry then required that the female students question Sandelowsky to "prove" their assertions that Sandelowsky had violated school policy.

39.

After the hearing, Sandelowsky was expelled for his actions against the female students. Sandelowsky appealed and the female students were informed that they would have to withstand another hearing.

40.

Instead, Berry chose to grant Sandelowsky the permission to voluntarily withdraw from Berry without penalty and without a record, thereby allowing him to enroll at Georgia State University, where he is currently a student.

## **PLAINTIFF'S CLAIMS FOR RELIEF**

### **Title IX: Sexual Harassment**

41.

Berry had actual notice that Sandelowsky was sexually harassing and sexually assaulting its students by and through an official with the ability to take actions to prevent the harassment.

42.

Sandelowsky's actions against Plaintiff and other female students were severe, pervasive and objectively offensive.

43.

Berry's decision not to remedy the harassment was clearly unreasonable in light of the known circumstances.

44.

Berry's choice not to take remedial action showed deliberate indifference to the complaints of sexual harassment and assault.

45.

Berry's deliberate indifference deprived Plaintiff of access to the educational opportunities and benefits provided by the school in violation of Title IX of the Education Act of 1972, as embodied in 20 U.S.C. § 1681(a), *et seq.*

46.

As a direct and proximate result of Berry's violation of plaintiff's Title IX rights, plaintiff has sustained severe and permanent emotional and physical injury to her body and psyche. Moreover, plaintiff has incurred medical expenses and other out-of-pocket expenses for the treatment of these injuries and expects to incur further such expenses into the indefinite future.

47.

As a further direct and proximate result of the violation of plaintiff's Title IX rights by Berry, plaintiff has lost wages, has had her earnings capacity diminished, has experienced a loss of enjoyment of life and has otherwise suffered great pain of both body and mind.

Title IX: Sex Discrimination

48.

Berry is required as a recipient of federal financial assistance to adopt and publish internal grievance procedures to promptly and equitably resolve complaints alleging discrimination on the basis of sex.

49.

Berry is required to establish and maintain a mechanism so that Berry is continually apprized of and evaluates possible discriminatory policies and procedures and develop strategies to correct discrimination.

50.

Berry's failure to establish an appropriate grievance procedure for sexual assault and steps to correct it, and allowing Sandelowsky to continue to sexually harass and assault Plaintiff and other female students violated Plaintiff's right to an education free from discrimination.

51.

As a direct and proximate result of Berry's violation of plaintiff's Title IX rights, plaintiff has sustained severe and permanent emotional and physical injury to her body and psyche. Moreover, plaintiff has incurred medical expenses and other out-of-pocket expenses for the treatment of these injuries and expects to incur further such expenses into the indefinite future.

52.

As a further direct and proximate result of the violation of plaintiff's Title IX rights by Berry, plaintiff has lost wages, has had her earnings

capacity diminished, has experienced a loss of enjoyment of life and has otherwise suffered great pain of both body and mind.

**STATE LAW CLAIMS FOR RELIEF**

53.

At all times relevant hereto, Berry owed a duty of care to Plaintiff to keep their premises safe from foreseeable unlawful acts of third parties on their Premises

54.

At all time relevant hereto, Berry acknowledged and recognized the need for security, and thus owed a duty of care to Plaintiff to provide adequate security on and about its Premises.

55.

At all times relevant hereto, Berry assumed the duty to protect its students from sexual assault.

56.

At all times relevant hereto, Berry assumed the duty to ensure the safety of its students.

57.

At all times relevant hereto, Berry had a duty to warn its students regarding crimes on its property.

58.

At all times relevant hereto, Berry had a duty to warn its students about the dangers inherent on the college campus and between its students.

59.

At all times relevant hereto, it was foreseeable that sexual assault would occur between college students at Berry.

60.

At all times relevant hereto, Berry had actual knowledge of Sandelowsky's harassing behavior on its campus and against Berry students.

61.

At all times relevant hereto, Berry had a responsibility to ensure the privacy of student information contained within its financial aid office.

62.

At all times relevant hereto, Berry had a duty to protect students from dangerous conditions on its property.

63.

At all times relevant hereto, Berry had a duty to protect students from dangerous conditions by its students.

64.

Berry ignored the circumstances that any reasonable person would interpret as leading to injury.

65.

Berry breached its duty of care to Plaintiff.

66.

Berry's breach of its duty proximately caused Plaintiff harm.

67.

As a result of Berry's breach of its duty, Plaintiff has suffered emotional distress, physical disfigurement, post-traumatic stress and depression and has been unable to function properly in her normal capacities.

### **Battery**

68.

On every occasion Defendant Sandelowsky touched Plaintiff in an offensive manner without her permission or without other justification, he committed battery upon Plaintiff.

69.

Defendant Sandelowsky is liable to Plaintiff for all general and special damages proximately resulting from his battery of Plaintiff.

### **Invasion of Privacy**

70.

By virtue of the acts herein alleged, Defendant Sandelowsky has plainly trespassed upon Plaintiff's privacy.

71.

Defendant Sandelowsky's conduct amounts to an affront to the Plaintiff's personal dignity, and an intrusion of the Plaintiff's solitude and private affairs.

72.

By virtue of the aforementioned conduct, Plaintiff is entitled to recover all actual and general damages that may be proven to have proximately resulted from the invasions of her right to privacy by Defendant Sandelowsky.

### **Ratification**

73.

Plaintiff re-allege the preceding paragraphs as if set forth fully herein.

74.

Defendant Berry acted to ratify the wrongful conduct of Defendant Sandelowsky. Defendant Berry is liable for all damages which the jury may

determine appropriate to compensate the Plaintiff for the harm done because of the damages she endured.

### **Punitive Damages**

75.

Plaintiff re-alleges the preceding paragraphs as if fully set forth herein.

76.

The foregoing acts of Defendants Berry and Sandelowsky were intentional and humiliating. Defendant Berry's acquiescence in the sexual harassment and sexual assault of its students further evinces a conscious disregard for the circumstances and rights of others, and a specific intent to cause harm. Plaintiff is accordingly entitled to recover from Defendants, in addition to her compensatory damages, an award of punitive damages under the law of Georgia and Title IX in order to punish Defendant, or to deter them from repeating such wrongful acts.

77.

As an alternative to any pecuniary loss suffered by Plaintiff, she has suffered injury to her peace, happiness, and feelings a result of the wrongful acts of Defendants, and in such event is entitled to recover vindictive damages provided by both Federal and Georgia law.

78.

The foregoing acts of Defendant evince a species of bad faith that entitles the Plaintiff to recover her necessary expenses of litigation, including an award of reasonable attorneys fees.

WHEREFORE, Plaintiff prays:

- (a) That the Court adjudicate and declare that the conduct of Defendant and its practices and policies complained of herein violated the Plaintiff's rights as secured under Title IX;
- (b) That the Court grant a permanent injunction in joining Defendant, its officers, agents, employees, attorneys, assigns and other representatives, from engaging in any practice or policy which discriminates against any student on the basis of sex;
- (c) That the Court order Defendant Berry College to make the plaintiff whole under Title IX by providing the appropriate back pay and reimbursement for any benefits in an amount to be shown at trial, and other appropriate affirmative relief.
- (d) That Plaintiff has and recovers against all Defendants a Judgment for compensatory damages sustained as a result of Defendants' wrongful acts, including damages for emotional distress sustained by the

Plaintiff, in such an amount as the jury determines to be appropriate under the circumstances;

- (e) That Plaintiff has and recovers against Defendants a judgment for punitive damages as result of the Defendants' willful, wanton and malicious conduct in such an amount as the jury determines to be appropriate under the circumstances;
- (f) That the Plaintiff has and recovers her necessary expenses for litigation, including reasonable attorneys fees;
- (g) That the Plaintiff has and recovers pre-judgment interest for all general and specific damages sustained by Plaintiff;
- (h) That the cost of this action be cast upon the Defendants; and
- (i) That the Plaintiffs be awarded such other and further relief as this Court may deem just and proper.