

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JONATHAN TURNER;

Plaintiff,

v.

TEXAS A&M UNIVERSITY; and
PORSHIA ADADE;

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff, JONATHAN TURNER (hereinafter referred to as, "Plaintiff"), by and through counsel, hereby complains and alleges against the above-named Defendants, and each of them, based upon knowledge, information and a reasonable belief derived therefrom, as follows:

VENUE & JURISDICTION

1. Jurisdiction is invoked pursuant to 28 U.S.C. § 1331 (questions of federal law) based upon Title IX of the Education Act Amendments of 1972; 20 U.S.C. § 1681, *et seq.*

2. This Court has supplementary jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to Plaintiff's federal claims that they form a part of the same case or controversy.

3. Venue is appropriate in this Court under 28 U.S.C. § 1391 as the claims arise in this district.

PARTIES

4. Plaintiff, Jonathan Turner, is currently a resident of the State of Texas, and at all relevant times, was a student at Texas A&M University.

5. Defendant, Texas A&M University (hereinafter referred to as, "TAMU"), is an agency of the State of Texas and an institution of higher education. TAMU may be served by serving its Interim President Mark Hussey at 1246 TAMU, Texas A&M University, College Station, Texas 77843.

6. Defendant, Porshia Adade, is an adult individual who at all material times hereto was a matriculated student at TAMU.

FACTS

7. At all times material hereto, Turner was a fourth year (senior) student at TAMU, a star track and field athlete, and maintained an exemplary academic record. He resided at off-campus housing located in College Station, Texas. Turner had also been accepted into the TAMU Graduate School.

8. Over a year prior to November 15, 2014, Turner and Adade became acquainted with each other through mutual friends and had consensual sexual intercourse on several prior occasions.

9. On the evening of November 15, 2014, Turner ran into Adade in the clubhouse of an off-campus student housing complex. That night, the two conversed for some time and then parted ways. Turner remained at the clubhouse with his friends.

10. At around midnight, Turner began cleaning up and taking out trash at the clubhouse. Afterwards, Turner and his friends went to an ATM and local McDonald's restaurant. At this time, Turner received a text message from Adade asking him what he was doing that night. Via text, the two agreed that Adade was going to come over to Turner's residence. Turner picked up Adade in his vehicle from her residence and they went back to his residence.

11. On that night, Turner had friends staying in his residence from out of town. Turner and Adade briefly spent time in the living area of Turner's residence and then agreed to go into Turner's bedroom. Adade then took off her sandals and sat back on Turner's bed. The two talked and watched television for about fifteen minutes while lying in bed next to each other. The two began kissing intimately and engaging in foreplay. Turner went to use the restroom and when he came back, Adade was still lying on his bed. The two began kissing and engaging in foreplay again and without force, suggestion, or intimidation, Turner began to perform oral sex on Adade. After that, Adade undressed Turner and performed oral sex on him. Adade then asked Turner to put on a condom, which he did, and the two voluntarily engaged in consensual sexual intercourse. Afterwards, they talked for a few minutes and then both went to sleep in Turner's bed.

12. At no time did Adade tell Turner that she wanted to leave his bedroom or his residence or ask to leave; at no time did Adade tell Turner or otherwise intimate to Turner that she did not want to engage in sexual intercourse with him. To the contrary, Adade clearly intimated that she did want to engage in sexual intercourse with Turner and fully participated.

13. The next morning, Turner's alarm went off and both he and Adade got dressed and walked to Turner's vehicle and he drove Adade home. When they arrived at Adade's residence, Turner asked that she not tell their mutual friends about what happened because Turner did not want to hurt his ex-girlfriend's feelings, who was also a friend of Adade. Adade laughed and said she would keep their sexual encounter private.

14. Sometime later, Turner began dating his ex-girlfriend again, who was friend with both Turner and Adade.

15. Shortly thereafter, Turner was informed by TAMU that he was being charged with violating the TAMU Student Conduct Code 24.4.20.1 – sexual abuse, 24.4.20.2 – sexual contact, and 24.4.3 – physical abuse arising out his November 15, 2014 encounter with Adade.

16. Adade claimed that Turner forced her to engage in non-consensual sexual intercourse and that she was held at Turner’s apartment against her will. These allegations, were not only wholly false, but they came as a complete shock and were egregiously unreasonable to Turner.

17. TAMU conducted absolutely no investigation to determine whether Adade’s outrageous allegations were true. TAMU simply accepted Adade’s allegations as true and commenced disciplinary proceedings against Turner, even though Adade had waited three weeks to bring said allegations and had not filed any police report or sought any medical attention.

18. In fact, when Adade discovered that Turner began dating Turner and Adade’s mutual friend, Adade became extremely jealous. It was not until that time that Adade decided to file her false claim that Turner forced her to have non-consensual intercourse with him. TAMU did not conduct any investigation to discover this fact.

19. When Turner learned of the charges filed against him, he contacted Adade and asked her why she was bringing these false charges against him. Adade responded, “if I can’t be happy – you can’t be happy.” Apparently, Adade wanted Turner to date her, not somebody else, which was her motivation to concoct her false story. Yet, TAMU never investigated the allegations to discover this fact.

20. Turner informed TAMU of the witnesses who were in his residence at the time the incident is alleged to have occurred, which included several of his roommates and weekend guests. But TAMU failed to discuss Adade’s allegations with these witnesses, who did not hear any loud

noises or any other pleadings of Adade that she wanted to leave Turner's residence or that she did not want to engage in intercourse with him.

21. TAMU also failed to consider the fact that Adade slept in bed with Turner that night and that Turner dropped her off at her residence the following morning or that Adade never filed a police report or sought medical care. TAMU did not consider the fact that Adade never even reported the alleged incident to the university until after she found out Turner began dating her a friend of hers.

22. TAMU issues to students a Student Conduct Code, which sets forth the standards of conduct expected of members of the TAMU community, as well as the policies and procedures for investigating and adjudicating complaints made by members of the TAMU community.

23. The Student Conduct Code defines and precludes sexual offenses such as non-consensual intercourse – sexual abuse; non-consensual sexual contact; sexual exploitation; physical abuse. TAMU is required to exercise due diligence in determining what occurred and further action that may be warranted based on the information provided.

24. Allegations against a TAMU student of sexual misconduct are required to be reported to the Dean of Student Life who is then required appoint an Investigating Authority who is responsible for all administrative activities required to conduct the investigation and is required to actually conduct an investigation and make a determination as to whether further investigation or a student conduct conference is warranted.

25. The Student Conduct Code sets forth the procedures for student conduct proceedings and provides that the accused student shall be presumed not responsible until it is proven that a violation of the University rules occurred by a preponderance of the information standard.

26. The Student Conduct Code states that the accused student and his/her advisor, if any, shall be allowed to attend the entire portion of the student conduct conference at which information is received; that the accused student and the Student Conduct Administrator may arrange for witnesses to present pertinent information to the Student Conduct Panel; witnesses may provide this information to and answer questions from the Student Conduct Panel, Student Conduct Administrator and accused student; pertinent records, exhibits, student impact statements and other written statements may be accepted as information for consideration by a Student Conduct Panel at the discretion of the chairperson.

27. The Student Conduct Code sets forth separate proceedings for student alleged to have engaged in sexual misconduct. Under this section, the accuser is not required to attend the student conduct conference where information is presented to the student conduct panel who determines whether a conduct code violation occurred, thereby purposely denying the accused the opportunity to question and confront his accuser and denying the panel the ability to test the accuser's veracity and credibility.

28. Turner was not permitted by the Student Conduct Panel to present his own exculpatory evidence at the student conduct meeting, which included the testimony of witnesses who were present at his residence when the incident allegedly occurred, the text messages between him and Adade on the night of the alleged incident, the testimony of Adade and Turner's mutual friend who would establish Adade's motive for bringing the false charges against Turner, or character statements. Turner was informed that this information was not relevant and he could not present it.

29. On February 27, 2015, Turner received correspondence from Dayna Ford issuing TAMU's decision to suspend him from the university February 26, 2015, through May 31, 2017.

Turner was found responsible for violating Student Conduct Code 24.4.20.1 – sexual abuse, 24.4.20.2 – sexual contact, and 24.4.3 – physical abuse. TAMU failed to issue findings of fact and claimed that the findings were based solely upon Adade’s unevaluated statement that she “did not give consent for [the November 15, 2014] sex acts.” TAMU did not even consider that Adade acknowledged at the student conduct hearing that she had consensual oral sex with Turner on the date in question, or any other evidence including Turner’s testimony or any exculpatory evidence he presented in the proceeding.

30. The panel conducted the hearing and made its finding in the face of gender biased influence created by TAMU, which served as a motivating factor behind the erroneous finding and refusal to allow Turner to confront his accuser, present exculpatory evidence, or to allow the panel to evaluate Adade’s testimony. Due to the fact that the accuser was female and Turner is a male, he was presumed responsible for the alleged conduct violations without regard for any evidence or information presented to the panel other one written sentence from Adade saying she did not give consent.

31. Turner appealed the decision pursuant to the Student Conduct Code. Like the Student Conduct Panel, the University Disciplinary Appeals Panel did not consider any evidence presented by Turner and considered only the statement of Adade in reaching its decision. In fact, when the appeals panel asked the student conduct panel members to explain why they reached their original decision to find Turner responsible, their only response was that they did not believe that Turner had any remorse for his actions. The student conduct panel members could not point to any evidence that they relied on to find Turner responsible. The appeals panel denied Turner’s appeal in its entirety. The panel reviewed the finding in the face of gender biased influence created by TAMU, which served as a motivating factor behind the erroneous finding and of TAMU’s

reluctance to allow the appeals panel to change its decision despite the fact that Turner could not be shown to be responsible for conduct violations by a preponderance of the information.

32. At no time were the police or other governmental entities ever contacted about the incident.

33. Male respondents in sexual misconduct cases at TAMU are discriminated against solely on the basis of sex. Male students at TAMU that are accused of sexual misconduct are deemed guilty until they can provide tangible proof that the female consented to sexual activity, placing an unequal and unfair burden on male students at TAMU. In student conduct code hearings male students are invariably found guilty, regardless of the evidence, or lack thereof, causing them to lose years of education, tuition, and professional future.

34. It is clear that TAMU has adopted a policy favoring female students who accuse male students of sexual misconduct. This policy is set up to encourage and facilitate the reporting of false allegations of sexual misconduct without any recourse for the falsely accused. This policy was in effect as of the date of the alleged incident and during the related hearings and was a motivating factor behind the erroneous findings and sanctions against Turner.

FIRST CAUSE OF ACTION

***VIOLATION OF TITLE IX OF THE EDUCATION ACT AMENDMENTS OF 1972,
20 U.S.C. §1681, et seq.***

(AGAINST TAMU)

35. Turner reincorporates by reference each and every preceding paragraph as if fully restated herein.

36. Title IX of the Education Amendments of 1972 provides, in relevant part, that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination

under any education program or activity receiving Federal financial assistance.

37. Title IX is enforceable through an implied right of action affording an aggrieved individual pecuniary damages and injunctive relief.

38. TAMU receives federal funding in various manners including student loans giving to students either directly or indirectly by the federal government or TAMU with funds furnished by the federal government.

39. TAMU's policies and procedures afford varying rights to women and men in virtually all cases of student sexual misconduct, the accused student is male and the accusing student is female and TAMU's procedures do not afford due process to both parties involved.

40. Upon information and belief, a female student at TAMU has never been disciplined, much less suspended or expelled for alleged sexual misconduct.

41. Based on the foregoing, TAMU conducted the disciplinary process in a manner that was biased against the male being accused. From the outset, the process was slanted in favor of Adade and the conduct and appeal panels took her statements at face-value. Turner was not allowed to present exculpatory evidence and the panel's finding was based solely on the statement of Adade saying she did not "give consent" for a sex act. The conduct and appeals panel also disregarded Adade's acknowledgement that she did consensually engage in oral sex with Turner on the date in question. Absent from the findings is the mention of (or explanation for its absence) any police report or health examination/rape kit made in connection with the alleged incident.

42. Based on the foregoing, TAMU imposed sanctions on Turner that were disproportionate to the severity of the charges levied against him and without any consideration of his unblemished disciplinary record at TAMU, and without providing any written summary for the basis therefor.

43. Based on the foregoing, TAMU's conduct code and regulations are set up to disproportionately affect the male student population of the TAMU community as a result of the higher incidence of female complainants of sexual misconduct against male complainants of sexual misconduct.

44. Based on the foregoing, male respondents in sexual misconduct cases at TAMU are discriminated against solely on the basis of sex. Male students at TAMU that are accused of sexual misconduct are deemed guilty until they can provide tangible proof that the female consented to sexual activity, placing an unequal and unfair burden on male students at TAMU. In student conduct code hearings male students are invariably found guilty, regardless of the evidence, or lack thereof, causing them to lose years of education, tuition, and professional future..

45. As a result of the foregoing, Turner is entitled to damages in an amount to be determined at trial, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements.

46. In addition, Turner is entitled to injunctive relief requiring TAMU to immediately vacate his suspension and allow him reenroll in the university; and to remove any findings of guilt or responsibility from his student record with respect to the charges brought against him by Adade.

SECOND CAUSE OF ACTION

BREACH OF CONTRACT

(AGAINST TAMU)

47. Turner reincorporates by reference each and every preceding paragraph as if fully restated herein.

48. By admitting Turner and accepting his tuition payments, Turner and TAMU have an express and implied contract, in connection with rights explicitly guaranteed by TAMU pursuant to the TAMU Student Conduct Code.

49. Turner had a reasonable expectation that TAMU would adhere to the terms of such contract, as contained in the Student Conduct Code.

50. Turner further had a reasonable expectation that the TAMU's stated procedures would comply with the requirement under the Title IX regulations to provide an equitable process for adjudicating claims of sexual misconduct and to ensure due process to both the accuser and the accused.

51. The actions of TAMU constitute a material and substantial breach of the express and implied contract by failing to conduct any investigation to determine whether Adade's allegations had any merit; by presuming Turner to be responsible for the conduct violations prior to gathering any information or evidence regarding the matter; failing to allow Turner to arrange for all of his witnesses to present pertinent information to the Student Conduct Panel; failing to allow Turner to present pertinent exculpatory records, exhibits, and character statements to the Student Conduct Panel; and by depriving Turner of a meaningful opportunity to appeal the decision of the Student Conduct Panel.

52. At all times relevant, Turner abided by and governed his conduct by the terms of the aforementioned contract and met all financial obligations.

53. As a direct and proximate result of TAMU's breaches, Turner sustained damages, including, without limitation, emotional distress, loss of educational and athletic opportunities, economic injuries and other direct and consequential damages.

54. It has been necessary for Turner to obtain the services of an attorney to prosecute this action, and Plaintiff is entitled to an award of attorney's fees and costs of suit incurred herein.

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THIRD CAUSE OF ACTION

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

(AGAINST TAMU)

55. Turner reincorporates by reference each and every preceding paragraph as if fully restated herein.

56. The aforementioned contract between the parties contained an implied covenant of good faith and fair dealing, which precludes TAMU from evading the spirit of the contract, willfully rendering imperfect performance, refraining from interference with Turner's ability to benefit from its terms, acting in contravention of Turner's reasonable expectations, failing to abide by the standards and policies promulgated by the TAMU, or otherwise acting in an arbitrary and capricious manner with respect to Turner.

57. The Defendant breached this implied covenant of good faith and fair dealing by failing to conduct a diligent, unbiased, and meaningful investigation and adjudication, and not conduct a sham proceeding designed to ratify an arbitrary decision already made.

58. Based on the aforementioned facts and circumstances, TAMU breached and violated a covenant of good faith and fair dealing implied in the agreement(s) with Turner by meting out the extreme disciplinary sanction of a two year suspension against Turner, notwithstanding the lack of evidence in support of Adade's false claim that she did not consent to sex.

59. As a result of the breach committed against Turner, he has suffered loss, damage and detriment including incidental, consequential and punitive damages.

60. It has been necessary for Turner to obtain the services of an attorney to prosecute this action, and Turner is entitled to an award of attorney's fees and costs of suit incurred herein.

FOURTH CAUSE OF ACTION

DEFAMATION

(AGAINST ADADE)

61. Turner reincorporates by reference each and every preceding paragraph as if fully restated herein.

62. Adade made statements to TAMU regarding Turner that he was the perpetrator of sexual assault against her which she knew to be false, defamatory, unprivileged and made with intent to harm Turner's reputation.

63. Adade's statements did damage Turner in the estimation of the community, deterred third persons from associating with him, blackened Turner's reputation and exposed him to public hatred, contempt and ridicule and caused him to be removed from TAMU and limit his future his future educational and employment prospects.

64. As a direct and proximate result of the defamation and/or defamation per se by Adade, Turner has suffered compensatory damages including, without limitation, emotional distress, loss of educational and athletic opportunities, economic injuries and other direct and consequential damages.

65. Adade, moreover, acted in a willful, malicious, outrageous, and intentional manner and with reckless disregard to the interests of Turner, warranting the imposition of punitive damages.

66. As a further direct and proximate result of Adade's defamatory statements, Turner has been required to retain the services of an attorney to prosecute this action.

WHEREFORE, Plaintiff prays that this Honorable Court enter judgment in Turner's favor, and against the Defendant, TAMU for (1) an injunction requiring TAMU to reinstate Turner into

the university and removal of notations on his university record of responsibility for the conduct alleged by Adade; (2) for compensatory damages, punitive damages, the costs and disbursements of this action, for interest, and such other attorney's fees and further relief as justice requires; and (3) any other relief that justice so requires; and against Defendant Adade for (1) compensatory damages, punitive damages, the costs and disbursements of this action, for interest, and such other attorney's fees and further relief as justice requires; and (2) any other relief that justice so requires.

JURY DEMAND

The Plaintiff, Jonathan Turner, respectfully prays a trial by jury on all issues so triable.

DATED this 27th day of May, 2015.

/s/ Jason J. Bach
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