

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA-DAVENPORT DIVISION

MELISSA ROSE WALDING MILLIGAN,

Plaintiff,

v.

THE UNIVERSITY OF IOWA and MARK WEIGER,

Defendants.

No. 3:08-cv-00141

COMPLAINT AND JURY DEMAND

COMES NOW the plaintiff, Melissa Rose Walding Milligan, by and through her attorney, Alison Werner Smith of Hayek, Brown, Moreland & Smith, L.L.P., and, for her complaint and jury demand, states to the court as follows:

COMPLAINT

I. NATURE OF ACTION

Melissa Rose Walding Milligan (“Milligan”) alleges she was subject to sexual harassment; a hostile educational environment, in violation of her federal and state civil rights, and the torts of negligent supervision and retention; interference with contract; harassment; and infliction of emotional distress by the defendants, causing her damage in various capacities.

II. PARTIES, JURISDICTION, AND VENUE

1. At all times material to the allegations in this complaint, Milligan was a resident of Iowa City, Johnson County, Iowa. Milligan currently resides in the state of Ohio.

2. At all times material to the allegations in this complaint, the University of Iowa (“University”) and its respective officers had their principal place of operation in Iowa City, Johnson County, Iowa.

3. At all times material to the allegations in this complaint, either Gary Fethke, Ph.D. (“Fethke”) was the University’s interim president or Sally Mason, Ph.D. (“Mason”) was the University’s president. During their respective terms, they were ultimately responsible for the overall administration, supervision, and control of the University and its employees, including those persons in the Department of Music (“department”), and they are sued herein in their official capacity only.

4. At all times material to the allegations in this complaint, Mark Weiger (“Weiger”) was, and currently is, a resident of Iowa City, Johnson County, Iowa.

5. Jurisdiction is proper in the United States District Court for the Southern District of Iowa as plaintiff is a citizen of another state, the University’s principal place of business in Iowa, and Weiger is a citizen of Iowa.

6. Jurisdiction is proper in the United States District Court for the Southern District of Iowa as it is the district where all defendants resided and/or operated.

7. Venue is also proper in United States District Court for the Southern District of Iowa as it is the district where the causes of action arose.

8. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331-2, 1343 and 20 U.S.C. 1687-1688.

9. Under the doctrine of pendent jurisdiction, this court has jurisdiction over Milligan’s state law causes of action.

III. BACKGROUND FACTS

10. Milligan was a graduate student enrolled at the University in the Doctorate of Music Arts (“D.M.A.”) program during the 2006-7 academic year.

11. Milligan obtained student loans to finance her studies and living expenses at the University.

12. Milligan's major field was the oboe, and she sought to complete the three-year course of study in the D.M.A. program, culminating in a doctoral degree.

13. Milligan was enrolled in graduate music classes and was also a teaching assistant in her major field.

14. Milligan was assigned to study under Weiger, a tenured music professor in her major field who taught oboe and chamber music at the University.

15. During the course of her classroom and private instruction, Milligan was regularly subject to Weiger's inappropriate sexual remarks and crude sexual humor.

16. Milligan also observed at least one act of inappropriate sexual touching by Weiger with another female student during instructional class time.

17. Weiger regularly engaged in inappropriate behavior during classes and instructional sessions, including telling jokes of a sexual nature and using inappropriate sexual language, much of which was directed towards Milligan.

18. Weiger was engaged in a sexual relationship with another student, which interfered with Milligan's class time as it diverted Weiger's attention from instruction as he focused on his sexual relationship instead.

19. In addition to the inappropriate sexual behavior, Weiger verbally harassed and subjected Milligan to personal character assaults, referring to her using derogatory terms and insults in the presence of other students on numerous occasions.

20. All of said actions interfered with Milligan's reasonable expectation of instruction and education at the University, hindered her completing her doctoral degree, and caused her emotional distress.

21. The University of Iowa Operations Manual (“manual”) describes the impact of sexual harassment by stating that it is:

...especially serious when it threatens relationships between teacher and student or supervisor and subordinate. In such situations [*sic*] sexual harassment unfairly exploits the power inherent in a faculty member’s or supervisor’s position. A supervisor’s or instructor’s control of grades, compensation, recommendations, promotions, and the like can have a decisive influence of a student’s... career at the university and beyond.

See manual, section 4.1(A)(2).

22. During winter 2006 and spring 2007, Milligan voiced her concerns to numerous faculty members in the department.

23. Upon information and belief, this is not the first complaint made to the University and the department regarding Weiger’s sexually inappropriate behavior.

24. At the time she voiced her complaints, the department and the University were aware of prior complaints against Weiger involving sexually inappropriate behavior toward other students.

25. Since 1993, the University was aware of Weiger’s inappropriate behavior, yet, when Milligan first complained about his behavior during the 2007 spring semester, the University did not address these issues, attempt to remediate the situation, stop the inappropriate behavior, or report Weiger’s misconduct.

26. In June 2007, Milligan filed a formal complaint with the University.

27. The University conducted an internal investigation responsive to the complaint and issued a finding of fact on September 28, 2007, concluding that Weiger had engaged in sexual harassment, that his acts created a hostile educational environment, and that a reasonable basis existed to conclude that Weiger violated the University’s sexual harassment policy.

28. During the investigation, Weiger conceded that he engaged in the sexually inappropriate activities and conversations of which Milligan complained and that he inappropriately touched another student during instructional time in the presence of other students.

29. The University found there was a pattern of sexual jokes and comments in the educational setting and that Weiger's behavior was of a sexual nature.

30. Upon information and belief, following the University's finding that Weiger engaged in sexual harassment and other inappropriate behavior, the University and Weiger reached an informal resolution of the matter.

31. The University failed to comply with manual section 4.2(D)(5), which requires the Office of the Provost to follow up with "the parties" at reasonable intervals. No University official ever contacted Milligan regarding any resolution of her situation or her inability to continue her studies in the department.

32. No accommodations were available for Milligan to work with another professor to complete her studies as Weiger is the only oboe professor on staff, and, due to his bad acts, she was unable to receive instruction appropriate to her terminal degree.

33. The pervasive nature of the harassment and the hostile educational environment fatally interfered with her ability to complete her chosen course of studies at the University.

34. As a direct result of the University's failure to address these issues and of Weiger's intentional and willful actions toward Milligan, she was compelled to withdraw from her coursework and discontinue the doctoral program at the University.

35. Milligan did not enroll in the following fall semester and tendered her teaching assistant resignation.

36. Milligan has been delayed and/or has lost one to two years of progress in her education as a result of Weiger's acts and the University's inaction.

37. As Milligan can only transfer a portion of the credits she earned at the University to her new music program at the Cincinnati Music Conservatory, she has lost an entire year of coursework that cannot be recovered, delaying her entry into the professional workforce and diminishing her earning capacity in her chosen profession as a result of the defendants' actions.

38. Milligan has sustained additional loss of income as her move to Ohio required her to discontinue private music instruction she had provided in Iowa as well as several part-time contracts as an oboe instructor at local community colleges in Iowa.

39. Milligan has been damaged in various capacities by the defendants' bad acts, including, but not limited to, financial damage, educational delay, humiliation, shame, embarrassment, emotional distress, mental distress, and anguish, as well as damages as a result of the violation of her federal and state civil rights.

40. Milligan filed a civil rights complaint with the Iowa Civil Rights Commission and received a right-to-sue letter on August 14, 2008, a copy of which is attached hereto as Exhibit A.

41. Milligan cross-filed her complaint with the EEOC and received a right-to-sue letter on September 16, 2008 Exhibit B.

COUNT I

SEXUAL HARASSMENT IN VIOLATION OF IOWA CODE SECTION 216.9 AND TITLE VII 42 USC § 2000(E) AND TITLE IX 20 USC § 1681-1686 AGAINST THE UNIVERSITY AND WEIGER

42. Milligan re-alleges paragraphs 1 through 40 as if fully set forth herein.

43. Milligan is part of the class of persons protected under chapter 216 of the Code of Iowa and United States Code section Title IX.

44. Iowa Code chapter 216, specifically § 216.9, prohibits unfair or discriminatory practices in education.

45. Title IX of the Education Amendments of 1972 requires a university that knows, or reasonably should know, of possible sexual harassment of students to take immediate and appropriate steps to investigate or otherwise determine what occurred, take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.

46. During Milligan's period of enrollment and employment at the University, she was subjected to unwelcome sexual harassment by Weiger.

47. Weiger engaged in repeated unwanted verbal and physical conduct of a sexual nature.

48. The conduct was based on Milligan's gender, which was the motivating factor in Weiger's continuous, sexually-offensive conduct in her presence.

49. Weiger specifically singled out and targeted Milligan as the object of the conduct and knew she found such conduct offensive since she had demanded repeatedly that he discontinue said conduct.

50. Weiger's conduct was sufficiently severe and pervasive such that a reasonable person in the Milligan's position would find, as she did, the educational and employment environment to be hostile.

51. Milligan reported the harassing conduct and participated in an investigation of the same.

52. The University failed to exercise reasonable care to prevent and promptly correct Weiger's harassing behavior.

53. Milligan has a basis for alleging institutional liability based on the University's knowledge of prior similar complaints and its deliberate indifference to the hostile environment.

54. Weiger's unwelcome words and acts created a hostile and offensive educational and employment environment, making it impossible for Milligan to effectively do her job and remain enrolled in graduate study.

55. As a result of her departure, Milligan had to transfer to a new school and has lost money and time associated with the completion of her graduate degree.

56. The sexual harassment and hostile environment defendants maintained is a direct and proximate cause of Milligan losing wages from her various Iowa employments in the field of music and music instruction, benefits, tuition money, graduate credits, and other economic revenue; suffering embarrassment, humiliation, grief, mental anguish, and incredible inconvenience; incurring the expenses of relocation and reenrollment; delaying her matriculation and entry into the work force.

57. The defendants' above-referenced unlawful acts and/or omissions is a direct and proximate cause of Milligan being subjected to a hostile educational environment, being deprived of her rights in violation of Iowa Code chapter 216 and Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1686, and suffering damages.

COUNT II

HARASSMENT AGAINST WEIGER

58. Milligan re-alleges paragraphs 1 through 56 as if fully set forth herein.

59. Without a legitimate purpose, Weiger communicated with Milligan on numerous occasions during the 2006-7 academic year in a manner likely to cause Milligan annoyance and/or harm.

60. Weiger did so with the specific intent to intimidate, annoy, and/or alarm Milligan.

61. This harassment is a direct and proximate cause of Milligan's damages as summarized in paragraph 38 *supra*.

COUNT III

NEGLIGENT SUPERVISION AND RETENTION BY THE UNIVERSITY

62. Milligan re-alleges paragraphs 1 through 60 as if fully set forth herein.

63. The University has a legal duty to use ordinary care to protect Milligan against unreasonable risks of harm.

64. The University was aware of prior similar behaviors by Weiger and was further aware of other civil rights complaints against Weiger for similar activity.

65. The University failed to exercise ordinary care when it retained Weiger after it knew or should have known that Weiger was causing harm to others.

66. The University breached its duty to properly supervise Weiger to prevent the objectionable conduct from recurring in the classroom environment.

67. The University breached its duty when it retained Weiger despite prior knowledge of his objectionable sexual conduct.

68. The University was negligent in its continued retention of Weiger despite its knowledge of his ongoing and inappropriate behavior.

69. The University's failure to properly supervise Weiger is a direct and proximate cause of Milligan's damages.

70. The University's continued negligent retention of Weiger is a direct and proximate cause of Milligan's damages.

COUNT IV

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST WEIGER

71. Milligan re-alleges paragraphs 1 through 69 as if fully set forth herein.

72. Weiger engaged in outrageous conduct that was intentional, causing emotional distress, or acted with reckless disregard of the probability of causing emotional distress.

73. Weiger's actions are a direct and proximate cause of Milligan suffering severe emotional distress.

74. Weiger's infliction of distress is a direct and proximate cause of Milligan's inability to continue with her doctoral degree program at the University.

75. As a result of the Weiger's intentional infliction of severe emotional distress, Milligan has been deprived of her expected course of studies, her gainful employment for which she was fully qualified and that she was capably performing; has lost wages and will continue to lose wages; has been stigmatized as a student and damaged in her ability to obtain a comparable education in a comparable timeframe; has been hindered in completing her doctoral studies and entering the workforce; has suffered reduced potential for advancement; and will continue to suffer a reduced earning capacity.

76. Weiger's outrageous conduct is a direct and proximate cause of Milligan's damages.

COUNT V

TORTIOUS INTERFERENCE WITH EMPLOYMENT RELATIONSHIP AGAINST WEIGER

77. Milligan re-alleges paragraphs 1 through 75 as if fully set forth herein.

78. Milligan had valid employment contracts with the department, with students for private music instruction, and with several local community colleges for music instruction.

79. Weiger knew of the contracts.

80. Weiger intentionally and improperly interfered with the contracts by engaging in harassing and offending conduct rendering Milligan unable to continue her studies and causing her to discontinue her contractual duties and performance.

81. None of the defendants was a party to Milligan's contracts with the local community colleges and the students for private instructional lessons.

82. Weiger's intentional and improper interference is a direct and proximate cause of Milligan being damaged by losing income, benefits, and reputation.

83. Weiger personally participated in wronging Milligan and is therefore liable to her for damages.

84. Weiger's actions violated Milligan's employment contracts with the University and with others, thus exceeding the scope of his employment.

85. Weiger's interference is a direct and proximate cause of the damages to Milligan's contractual relations and her goals of continued employment.

86. Weiger's actions were willful, wanton, and done in malice or in disregard of Milligan's rights, entitling her to punitive damages.

87. Weiger's actions are a direct and proximate cause of Milligan's suffering substantial loss of earnings and benefits in the past, present, and future; incurring expenses in locating other employment in the past, present, and future; and suffering mental anguish and professional embarrassment, all of which were foreseeable to Weiger as likely to occur as a result of his actions.

IV. DAMAGES

88. Milligan re-alleges paragraphs 1 through 87 as if fully set forth herein.

89. Milligan's damages include the following:

- A. Actual damages;
- B. Emotional suffering and distress;
- C. Past, present, and future lost wages;
- D. Nominal damages; and

E. Punitive damages.

90. The damages the defendants caused against Milligan meet or exceed the jurisdictional requirements of this court.

WHEREFORE, the plaintiff, Melissa Rose Walding Milligan, seeks judgment against defendants for damages she suffered as above stated and seeks any other equitable and legal relief as the court deems appropriate.

JURY DEMAND

Plaintiff Melissa Rose Walding Milligan requests a jury trial on all issues in this case.

Respectfully submitted,

/s/ Alison Werner Smith

Alison Werner Smith

AT0007390

Hayek, Brown, Moreland & Smith, L.L.P.

120 East Washington Street

Iowa City, Iowa 52240-3924

319/337-9606 telephone; 319/338-7376 facsimile

E-mail: awsmith@hhbmlaw.com

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that, on November 7, 2008, I electronically filed the foregoing with the Clerk of the United States District Court - Southern District of Iowa, which will send CM/ECF electronic notification of such filing to each of the counsel/parties listed below:

George Carroll, Assistant Attorney General
Hoover Building, Second Floor
1305 East Walnut Street
Des Moines, Iowa 50319

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Alison Werner Smith

Alison Werner Smith

Administrative Release
(Letter of Right-To-Sue)

To:) From:
MS. MELISSA-ROSE MILLIGAN)
2706 [REDACTED] LANE) Iowa Civil Rights Commission
[REDACTED]) Grimes State Office Building
IOWA CITY, IA 5224 [REDACTED]) 400 E. 14 th Street
) Des Moines, Iowa 50319
Complaint CP# 10-07-54178	EEOC# 26A-2008-00120C

This is your Administrative Release (Right-To-Sue) Letter issued pursuant to Iowa Code Section 216.16 and 161 Iowa Administrative Code Section 3.10. It is issued pursuant to the Complainant's request.

The following conditions have been met:

1. The complaint was timely filed with the Iowa Civil Rights Commission (ICRC) as provided in Iowa Code Section 216.15(12);
2. Sixty (60) days have expired since the complaint was filed with ICRC;
3. None of the exceptions set forth in Administrative Rule 161 – 3.10(4) are applicable.

With this Administrative Release, the Complainant has the right to commence an action in state district court. That action must be commenced within ninety (90) days of the issue date 8/14/2008. *The Right-to-Sue Letter is not a finding by ICRC on the merits of the charge. ICRC will take no further actions in this matter.*

A copy of this Administrative Release/Letter of Right-To-Sue has been sent to the Respondent(s) and counsel(s) as shown below. The Code allows any party to obtain a complete copy of the case file after a Right-To-Sue has been issued. Requests for copies should be directed to Marcia Coverdale at ICRC.

The Iowa Civil Rights Commission
Phone: (515) 281-4121
FAX: (515) 242-5840

cc: File
ALISON W. SMITH, Complainant's Attorney
THE UNIVERSITY OF IOWA
THE BOARD OF REGENTS, STATE OF IOWA
MARK WEIGER



U.S. Department of Justice

Civil Rights Division

NOTICE OF RIGHT TO SUE

WITHIN 90 DAYS

CERTIFIED MAIL
5054 3747

950 Pennsylvania Avenue, N.W.
Karen Ferguson, EMP, PHB, Room 4239
Washington, DC 20530

September 16, 2008

Ms. Melissa-Rose Walding Milligan
c/o Alison Werner Smith, Esquire
Law Offices of Hayek, Brown, et al.
Attorneys at Law
120 East Washington St.
Iowa City, IA 52240-3924

Re: EEOC Charge Against University of Iowa, et al.
No. 26A200800120

Dear Ms. Walding Milligan:

Because you filed the above charge with the Equal Employment Opportunity Commission, and more than 180 days have elapsed since the date the Commission assumed jurisdiction over the charge, and no suit based thereon has been filed by this Department, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

The investigative file pertaining to your case is located in the EEOC Milwaukee District Office, Milwaukee, WI.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Grace Chung Becker
Acting Assistant Attorney General
Civil Rights Division

by

A handwritten signature in cursive script that reads "Karen L. Ferguson".

Karen L. Ferguson
Supervisory Civil Rights Analyst
Employment Litigation Section

cc: Milwaukee District Office, EEOC
University of Iowa, et al.