



# Accused Student Sues Columbia University Over Mattress Case

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It looks like the “mattress case” will not be going to bed anytime soon.

On Thursday, April 23, 2015, Paul Nungesser, the accused student at the center of the internationally renowned “mattress case” (“Nungesser”) filed a Title IX [lawsuit](#) against Columbia University (the “University”), alleging that the school failed to properly respond to Emma Sulkowicz’s (“Sulkowicz”) “harassment campaign” against him, which has “effectively destroyed his college experience, reputation, and future career prospects.”

By way of brief background, in September 2014, Sulkowicz began carrying a mattress around campus as part of a public effort to demonstrate her disapproval of the University’s response to her claim of sexual misconduct against Nungesser. The alleged rape occurred in August 2012, though Sulkowicz did not report the claim to University officials until the spring semester of the following year. In 2013, Nungesser was absolved of all wrongdoing via the University’s sexual adjudication process. The police also declined to press charges against Nungesser. Nonetheless, Sulkowicz alleges that the University’s disciplinary panel improperly handled her sexual misconduct case. As part of her thesis project, titled “Carry that Weight,” Sulkowicz is carrying a mattress around campus as a form of public protest. In her words, “I will carry the mattress with me to all of my classes, every campus building, for as long as my rapist stays on the same campus with me.” She has also vowed to carry the mattress to graduation if Nungesser attends.

Since its inception in September 2014, “Carry that Weight” has transformed into an international phenomenon. Sulkowicz has been featured in the New York Times, Time Magazine, and dozens of other news sources. In October 2014, more than 130 institutions across the nation organized a “Day of Action” where students toted mattresses around campus. In January 2015, Sulkowicz attended the State of the Union as Senator Kirsten Gillibrand’s guest of honor.

Interestingly, Nungesser’s lawsuit does not name Sulkowicz as a defendant. Rather, the 56-page complaint alleges that by allowing Sulkowicz’s activism, the University and President Bollinger allowed Nungesser to endure, among other things, a hostile educational environment in violation of Title IX. “By refusing to protect Paul Nungesser, Columbia University first became a silent bystander and then turned into an active supporter of a fellow student’s harassment campaign by institutionalizing it and heralding it,” the lawsuit reads. “Columbia University’s effective sponsorship of the gender-based harassment and defamation of Paul resulted in an intimidating, hostile, demeaning...learning and living environment.” The lawsuit also contends that by approving Sulkowicz’s mattress project, Jon Kessler, a visual arts professor who is also named as a defendant in the case, “publically

endorsed her harassment and defamation of Nungesser.” “She is actively earning course credit from Columbia for this outrageous display of harassment and defamation,” the lawsuit says.

The complaint further states that in accordance with the University’s confidentiality policy, Nungesser did not discuss the investigation or the alleged incident with any of his peers. To the contrary, “Emma did the exact opposite, gaining support from classmates, professors, the administration, and President Bollinger. Emma has not faced any consequences for breaching the confidentiality policy.” As a result of the case reaching more than 35 countries across the globe, the lawsuit contends Nungesser “has been subjected to severe, pervasive..and threatening behavior by other Columbia students, believing that Paul is a ‘serial rapist’ whenever Paul has appeared at university activities.”

The lawsuit seeks an unspecified amount of damages for the harm inflicted on Nungesser’s reputation, job prospects, and educational opportunities. Nungesser suffered “damages to his physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, education and athletic activities, and loss of future career prospects,” his attorney said in a statement. Nungesser is also seeking to prohibit Sulkowicz from bringing the mattress to graduation.

Columbia University is not the first, nor is it the last higher education institution to be placed in the national spotlight over its alleged mishandling of sexual harassment and sexual assault complaints. At an increasing rate, students who have been accused of sexual misconduct are bringing Title IX and common law contract claims against their institutions, while complainants use the same legal theories to sue their institutions for allegedly failing to properly investigate claims of sexual assault. In light of this new era of Title IX enforcement, colleges and universities need to rethink how they effectively prevent, investigate, and respond to allegations of sexual misconduct in order to avoid unprecedented media attention and unforeseen, substantial, and budget-busting expenses.

If you or your institution has any questions or concerns regarding employment or education-related issues, please contact Hayley B. Dryer at [hdryer@cullenanddykman.com](mailto:hdryer@cullenanddykman.com) or at 516-357-3745.