

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

LAUREN KESTERSON,

Plaintiff

v.

Kent State UNIVERSITY, ET AL.,

Defendants.

Case No. 5:16-cv-00298-SL

JUDGE SARA LIOI

KENT STATE UNIVERSITY'S  
ANSWER TO THE COMPLAINT

Comes now Defendant **Kent State University** and hereby tenders its Answer to the Complaint filed by Plaintiff **Lauren Kesterson**, as follows:

**ANSWER**

1. Defendant denies paragraph 1 of Plaintiff's Complaint.
2. Defendant admits paragraph 2 of Plaintiff's Complaint.
3. Defendant admits paragraph 3 of Plaintiff's Complaint.
4. Defendant admits paragraph 4 of Plaintiff's Complaint.
5. Defendant denies paragraph 5 of Plaintiff's Complaint as written, as this

Court is without jurisdiction to consider a 42 U.S.C. § 1983 claim against Kent State University. Defendant admits that this Court has jurisdiction to consider Plaintiff's Title IX claim against Kent State University.



6. Defendant denies paragraph 6 of Plaintiff's Complaint as written, as this Court is without jurisdiction to consider the particular state law claims advanced by Plaintiff.

7. Defendant admits paragraph 7 of Plaintiff's Complaint.

8. Defendant admits paragraph 8 of Plaintiff's Complaint.

9. In response to paragraph 9 of Plaintiff's Complaint, Defendant admits that its athletic coaches have some degree of power to make team rules and schedules, but does not admit to each of the particulars of this allegation. Defendant is without knowledge as to the practices of other universities and therefore must deny any generalizations about coaches at other universities. Any allegations of this paragraph not specifically admitted are denied.

10. In response to paragraph 10 of Plaintiff's Complaint, Defendant admits that its athletic coaches have some degree of power to make team rules, and some of its coaches have rules covering topics set forth in the paragraph. Defendant is without knowledge as to the practices of other universities and therefore must deny any generalizations about coaches at other universities. Any allegations of this paragraph not specifically admitted are denied.

11. In response to paragraph 11 of Plaintiff's Complaint, Defendant admits that some of its athletic coaches enforce rules in the offseason and off campus. Defendant is without knowledge as to the practices of other universities and therefore must deny any generalizations about coaches at other universities. Any allegations of this paragraph not specifically admitted are denied.



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12. In response to paragraph 12 of Plaintiff's Complaint, Defendant admits that Coach Karen Linder had team rules for the Softball team, but denies that those rules included the all of the particulars related by Plaintiff.

13. In response to paragraph 13 of Plaintiff's Complaint, Defendant admits that athletic scholarships are year-to-year at Kent State, and Defendant understands that to be true of other NCAA participants, but Defendant is without knowledge as to the practices of other universities and therefore must deny generalizations about other universities as being without knowledge. Any allegations of this paragraph not specifically admitted are denied

14. Defendant denies paragraph 14 of Plaintiff's Complaint as Defendant is without knowledge on this topic as to other universities.

15. Defendant denies paragraph 15 of Plaintiff's Complaint.

16. In response to paragraph 16 of Plaintiff's Complaint, Defendant admits college coaches have some power over their sports programs and player conduct for players who chose to participate in sports. Defendant denies any characterizations made by plaintiff beyond that admission.

17. Defendant denies paragraph 17 of Plaintiff's Complaint as it is vague.

18. Defendant denies paragraph 18 of Plaintiff's Complaint as being nonsensical.

19. Defendant admits that Plaintiff and her twin sister's home state is Washington, but denies the remaining allegations of paragraph 19 of Plaintiff's Complaint as Defendant is without knowledge on this topic.



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20. Defendant admits that Coach Linder was involved in recruiting Plaintiff and her twin sister to play softball at Kent State but denies that Coach Linder was their first contact with the University as Defendant is without knowledge on this topic. Defendant denies the remaining allegations of paragraph 20 of Plaintiff's Complaint.

21. Defendant admits paragraph 21 of Plaintiff's Complaint.

22. Defendant admits paragraph 22 of Plaintiff's Complaint

23. Defendant admits paragraph 23 of Plaintiff's Complaint.

24. In response to paragraph 24 of Plaintiff's Complaint, Defendant admits that the subject website says what it says.

25. Defendant denies paragraph 25 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

26. Defendant denies paragraph 26 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

27. Defendant denies paragraph 27 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

28. Defendant denies paragraph 28 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

29. Defendant denies paragraph 29 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

30. Defendant denies paragraph 30 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

31. Defendant denies paragraph 31 of Plaintiff's Complaint as Defendant is without knowledge on this topic.



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32. Defendant denies paragraph 32 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

33. Defendant denies paragraph 33 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

34. Defendant denies paragraph 34 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

35. Defendant denies paragraph 35 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

36. Defendant denies paragraph 36 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

37. Defendant denies paragraph 37 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

38. Defendant denies paragraph 38 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

39. In response to paragraph 39 of Plaintiff's Complaint, Defendant denies Plaintiff's allegation concerning her grade point average and denies for lack of knowledge her allegation concerning her high school performance. Defendant denies the other allegations of this paragraph unless specifically admitted.

40. In response to paragraph 40 of Plaintiff's Complaint, Defendant admits that Plaintiff's grades are what they are, but denies as being without knowledge as to any alleged cause of certain grade point averages.



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41. In response to paragraph 41 of Plaintiff's Complaint, Defendant admits that softball and baseball shares some facilities and training areas, but denies the remainder of the paragraph as Defendant is without knowledge on this topic.

42. Defendant denies paragraph 42 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

43. Defendant denies paragraph 43 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

44. Defendant denies paragraph 44 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

45. Defendant denies paragraph 45 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

46. Defendant denies paragraph 46 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

47. Defendant denies paragraph 47 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

48. Defendant denies paragraph 48 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

49. In response to paragraph 49 of Plaintiff's Complaint, Defendant admits that Plaintiff started most of the softball team's games in the 2014 season as shortstop, but denies the remainder of the paragraph as Defendant is without knowledge on this topic



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50. In response to paragraph 50 of Plaintiff's Complaint, Defendant admits that Plaintiff accurately stated her term grade point average, but denies as being without knowledge as to the cause for the lower grade point average.

51. Defendant denies paragraph 51 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

52. Defendant denies paragraph 52 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

53. Defendant denies paragraph 53 of Plaintiff's Complaint.

54. Defendant admits that Plaintiff met with Coach Linder for an exit meeting sometime in May 2014, but denies any knowledge of the particulars of this conversation. Defendant specifically denies the allegation that "During this meeting, Ms. Kesterson lodged a Title IX complaint with the University." Defendant denies the remaining allegations in paragraph 54 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

55. Defendant denies paragraph 55 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

56. Defendant denies paragraph 56 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

57. Defendant denies paragraph 57 of Plaintiff's Complaint as Defendant is without knowledge of the particulars of this conversation.

58. Defendant denies paragraph 58 of Plaintiff's Complaint as Defendant is without knowledge on this topic.



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59. Defendant denies paragraph 59 of Plaintiff's Complaint as Defendant is without knowledge of the particulars of this conversation. However, Defendant specifically denies that Kesterson made a "Title IX Complaint" at the time of the alleged conversation with Coach Linder.

60. Defendant denies paragraph 60 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

61. Defendant denies paragraph 61 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

62. Defendant denies paragraph 62 of Plaintiff's Complaint as Defendant is without knowledge of the particulars of this conversation. However, Defendant specifically denies that Kesterson made a "Title IX Complaint" at the time of the alleged conversation with Coach Linder.

63. Defendant denies paragraph 63 of Plaintiff's Complaint as Defendant is without knowledge of the particulars of this conversation. However, Defendant specifically denies that Kesterson made a "Title IX Complaint" at the time of the alleged conversation with Coach Linder.

64. Defendant denies paragraph 64 of Plaintiff's Complaint as Defendant is without knowledge of the particulars of this conversation. However, Defendant specifically denies that Kesterson made a "Title IX Complaint" at the time of the alleged conversation with Coach Linder.

65. Defendant denies paragraph 65 of Plaintiff's Complaint as Defendant is without knowledge on this topic.



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66. Defendant denies paragraph 66 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

67. Defendant denies paragraph 67 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

68. Defendant denies paragraph 68 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

69. In response to paragraph 69 of Plaintiff's Complaint, Defendant specifically denies any allegation or inference that Plaintiff's alleged conversation with Coach Linder at her May 2014 exit meeting constituted a "Title IX Complaint." Defendant admits that Coach Linder had a duty under university policy to report allegations of sexual assault to the appropriate Kent State officials. Defendant denies the remaining allegations of paragraph 69 of Plaintiff's Complaint.

70. Defendant denies paragraph 70 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

71. Defendant admits to learning in 2015 that Coach Linder called Plaintiff's mother sometime after Plaintiff's May 2014 exit meeting with Coach Linder, but is without knowledge of the particulars of this conversation. Defendant specifically denies any allegation or inference that Plaintiff's alleged conversation with Coach Linder at her May 2014 exit meeting constituted a "Title IX Report." Defendant denies the remaining allegations of paragraph 71 of Plaintiff's Complaint.

72. In response to paragraph 72 of Plaintiff's Complaint, Defendant admits that it has received a document from Plaintiff in 2015 which set forth the words



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related by Plaintiff in this paragraph of her Complaint, but Defendant is unaware of the authenticity of the document, and thus must deny the paragraph in total.

73. Defendant denies paragraph 73 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

74. In response to paragraph 74 of Plaintiff's Complaint, Defendant admits Coach Linder had a duty under university policy to report allegations of sexual assault to the appropriate Kent State officials and did not do so. Defendant denies the remaining allegations of this paragraph.

75. In response to paragraph 75 of Plaintiff's Complaint, Defendant admits Coach Linder had a duty under university policy to report allegations of sexual assault to the appropriate Kent State officials and did not do so. Defendant denies the remaining allegations of this paragraph.

76. Defendant admits paragraph 76 of Plaintiff's Complaint.

77. Defendant denies paragraph 77 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

78. Defendant denies paragraph 78 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

79. Defendant denies paragraph 79 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

80. Defendant states that it cannot confirm or deny the existence of any other reported sexual assault of a student in conformance with Title IX, the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99),



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and Kent State University policy. Defendant therefore denies the allegations in paragraph 80 of Plaintiff's Complaint.

81. Defendant states that it cannot confirm or deny the existence of any other reported sexual assault of a student in conformance with Title IX, the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), and Kent State University policy. Defendant therefore denies the allegations in paragraph 81 of Plaintiff's Complaint.

82. Defendant states that it cannot confirm or deny the existence of any other reported sexual assault of a student in conformance with Title IX, the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), and Kent State University policy. Defendant therefore denies the allegations in paragraph 82 of Plaintiff's Complaint.

83. In response to paragraph 83 of Plaintiff's Complaint, Defendant denies as being without knowledge as to Coach Linder's knowledge or state of mind.

84. Defendant denies paragraph 84 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

85. Defendant admits that Coach Linder would host team events at her home. Defendant denies the remaining allegations of paragraph 85 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

86. Defendant denies paragraph 86 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

87. Defendant denies paragraph 87 of Plaintiff's Complaint as Defendant is without knowledge on this topic.



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88. Defendant denies paragraph 88 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

89. Defendant denies paragraph 89 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

90. In response to paragraph 90 of Plaintiff's Complaint, Defendant admits that the softball team moved Plaintiff from shortstop to second base in the spring 2015 season, but did so because Plaintiff was beat out as shortstop in open competition by another player based upon performance on the softball field. All other allegations of the paragraph are denied.

91. Defendant denies paragraph 91 of Plaintiff's Complaint as Defendant is without knowledge on this topic, and further states that Coach Oakley does not recall the conversation related in the paragraph.

92. Defendant denies paragraph 92 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

93. Defendant denies paragraph 93 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

94. In response to paragraph 94 of Plaintiff's Complaint, Defendant admits that Coach Linder violated Kent State policy requiring Coach Linder to report Plaintiff's allegation of sexual assault to appropriate Kent State officials. Defendant denies the remaining allegations of paragraph 94 of Plaintiff's Complaint.

95. Defendant denies paragraph 95 of Plaintiff's Complaint as Defendant is without knowledge on this topic.



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96. Defendant denies paragraph 96 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

97. In response to paragraph 97 of Plaintiff's Complaint, Defendant admits that Kent State University policies speak for themselves. Defendant admits that Coach Linder violated Kent State policy requiring Coach Linder to report Plaintiff's allegation of sexual assault to appropriate Kent State officials. Defendant denies the remaining allegations of paragraph 97 of Plaintiff's Complaint.

98. Defendant denies paragraph 98 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

99. Defendant denies paragraph 99 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

100. Defendant denies paragraph 100 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

101. Defendant admits paragraph 101 of Plaintiff's Complaint.

102. In response to paragraph 102 of Plaintiff's Complaint, Defendant admits that Plaintiff signed, and Defendant accepted, a formal Title IX complaint against Coach Linder and her alleged assailant early in the day on August 24, 2015. Defendant admits that Erin Barton encouraged Plaintiff to file the Complaint and expressed that she would immediately investigate. Defendant denies, for lack of knowledge, allegations as to any specific statement made during the meeting between Plaintiff and Ms. Barton. All other allegations of this paragraph not specifically admitted are denied.



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103. In response to paragraph 103 of Plaintiff's Complaint, Defendant admits that Erin Barton represented that she would immediately investigate Plaintiff's Complaint and look into obtaining no-contact orders. Defendant denies that Erin Barton made any representation about "filing" a "formal complaint." A formal complaint had already been filed by Plaintiff when she signed the complaint form and delivered it to Erin Barton. Defendant admits that Erin Barton described the complaint and investigation process to Plaintiff, and represented to her that Joel Nielsen and other senior administrators would be informed of Plaintiff's Title IX complaint.

104. Defendant denies paragraph 104 of Plaintiff's Complaint.

105. Defendant denies paragraph 105 of Plaintiff's Complaint. A formal Title IX complaint was filed, investigated, and appropriate remedial action was taken very quickly. All other allegations of this paragraph not specifically admitted are denied.

106. Defendant denies paragraph 106 of Plaintiff's Complaint. A formal Title IX complaint was filed, investigated, and appropriate remedial action was taken very quickly. All other allegations of this paragraph not specifically admitted are denied.

107. Defendant denies paragraph 107 of Plaintiff's Complaint, in that that Kent State University policies speak for themselves.

108. Defendant denies paragraph 108 of Plaintiff's Complaint. Defendant specifically states that Joel Nielsen did not impair, nor did he attempt to impair, the Title IX complaint or investigation process.

109. In response to paragraph 109 of Plaintiff's Complaint, Defendant admits that a meeting including Joel Nielsen, Plaintiff, and Plaintiff's Father occurred on



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August 24<sup>th</sup> or August 25<sup>th</sup> of 2015. Defendant admits that Nielsen did discuss the question of whether Plaintiff wanted to continue playing softball and her scholarship status, but denies that the quotations related are strictly accurate. All other allegations of this paragraph not specifically admitted are denied.

110. Defendant admits that on August 26, 2015 at 1:00 p.m., Deputy Title IX Coordinators Erin Barton and Pamela Fitzgerald interviewed Coach Linder on the allegations of Plaintiff's August 24, 2015 Title IX complaint. Defendant denies the remaining allegations of paragraph 110 of Plaintiff's Complaint.

111. Defendant admits that no one notified Plaintiff concerning the interview with Coach Linder. Defendant denies the remaining allegations in paragraph 111 of Plaintiff's Complaint.

112. Defendant denies paragraph 112 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

113. Defendant denies paragraph 113 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

114. Defendant admits paragraph 114 of Plaintiff's Complaint.

115. Defendant admits paragraph 115 of Plaintiff's Complaint.

116. Defendant denies paragraph 116 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

117. Defendant denies paragraph 117 of Plaintiff's Complaint as Defendant is without knowledge on this topic.



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118. Defendant admits that the article referenced in paragraph 118 of Plaintiff's Complaint was published and that some words from the article are accurately reprinted. Defendant denies the remaining allegations of this paragraph.

119. Defendant denies paragraph 119 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

120. Defendant denies paragraph 120 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

121. Defendant denies paragraph 121 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

122. Defendant denies paragraph 122 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

123. Defendant denies paragraph 123 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

124. Defendant denies paragraph 124 of Plaintiff's Complaint as written. Kent State had no knowledge of the majority of statements that Plaintiff alleged that Karen Linder made, and as for any statements that Kent State did have knowledge of, those statements were largely matters of Coach Linder's opinion.

125. Defendant denies paragraph 125 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

126. In response to paragraph 126 of Plaintiff's Complaint, Defendant admits that Lauren Kesterson attended a meeting related to the softball team on August 30, 2015. All other allegations of the paragraph are denied.



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127. In response to paragraph 127 of Plaintiff's Complaint, Defendant admits that Coach Oakley and Coach Toocheck held a meeting on August 31, 2015. All other allegations of the paragraph are denied.

128. In response to paragraph 128 of Plaintiff's Complaint, Defendant specifically denies that Coach Oakley made any threats. Defendant admits, upon information and belief, that Coach Toocheck did cry during the meeting, but all other allegations of the paragraph are denied.

129. In response to paragraph 129 of Plaintiff's Complaint, Defendant admits that Coach Oakley did know the reason for Coach Linder's resignation because Coach Linder told him on the morning of August 28, 2015. All other allegations of the paragraph are denied.

130. Defendant denies paragraph 130 of Plaintiff's Complaint as being without knowledge, and specifically denies any form of retaliation by Coach Oakley.

131. Defendant denies paragraph 131 of Plaintiff's Complaint as being without knowledge, and specifically denies that there was a retaliatory climate.

132. Defendant denies paragraph 132 of Plaintiff's Complaint, as Defendant is without knowledge on this topic.

133. Defendant denies paragraph 133 of Plaintiff's Complaint, as Defendant is without knowledge on this topic.

134. Defendant admits paragraph 134 of Plaintiff's Complaint.

135. In response to paragraph 135 of Plaintiff's Complaint, Defendant admits that the Softball team held a retreat on September 5-7, 2015, and that Plaintiff did not attend. Defendant denies the allegation that Plaintiff or her twin sister would



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have been subject to retaliation on the camping trip. Defendant denies the remainder of the paragraph as without knowledge on this topic.

136. In response to paragraph 136 of Plaintiff's Complaint, Defendant admits that Coach Oakley did know the reason for Coach Linder's resignation because Coach Linder told him on the morning of August 28, 2015. Defendant admits that Plaintiff and Joel Nielsen discussed Coach Oakley's knowledge of Plaintiff's Complaint and that Nielsen accurately represented to Plaintiff that Coach Linder was the source of Coach Oakley's information. All other allegations of the paragraph are denied.

137. Defendant admits paragraph 137 of Plaintiff's Complaint insofar as Joel Nielsen recalls speaking with Plaintiff about the topic related in this paragraph, but denies the characterization of the conversation made by Plaintiff, and is unsure of the date of the conversation. Defendant denies the remaining allegations of this paragraph.

138. Defendant denies paragraph 138 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

139. Defendant denies paragraph 139 of Plaintiff's Complaint.

140. Defendant admits Plaintiff's sister also quit the softball team. Defendant denies the remaining allegations of paragraph 140 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

141. Defendant denies paragraph 141 of Plaintiff's Complaint as Defendant is without knowledge on this topic.



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142. Defendant denies paragraph 142 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

143. Defendant, upon information and belief, admits that Coach Linder may have attended one or more, but not all, fall home softball games. Defendant denies the remaining allegations of paragraph 143 of Plaintiff's Complaint.

144. Defendant admits, only through an after-the-fact investigation, that Coach Linder attended the fall 2015 softball Alumni game, which was rained out. Defendant admits that Alumni of the softball team were present, and that Carrie Eneix may have been present as well. Defendant admits, also through after-the-fact investigation, that some alumni wore t-shirts supporting Coach Linder to the event. Defendant denies the remaining allegations in paragraph 144 of Plaintiff's Complaint.

145. Defendant denies paragraph 145 of Plaintiff's Complaint as being without knowledge of the topic, and has not uncovered any indication as of yet that then-current softball players wore the referenced t-shirts.

146. Defendant denies paragraph 146 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

147. Defendant denies paragraph 147 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

148. Defendant denies paragraph 148 of Plaintiff's Complaint as Defendant is without knowledge on this topic.



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149. In response to paragraph 149 of Plaintiff's Complaint, Kent State admits to providing support for student-athletes who want to attend summer classes. Kent State denies the remaining portions of the paragraph as overly broad statements.

150. In response to paragraph 150 of Plaintiff's Complaint, Defendant admits that Plaintiff will not graduate at the end of the current academic year and needs an additional semester to complete her degree requirements. Defendant denies the remainder of the paragraph as being without knowledge.

151. Defendant admits paragraph 151 of Plaintiff's Complaint.

152. In response to paragraph 152 of Plaintiff's Complaint, Defendant admits that Erin Barton resigned on September 22, 2015 for reasons unrelated to Plaintiff's Title IX Complaint, but denies the characterization that she resigned "abruptly." Defendant admits that on February 8, 2016, one of several Kent State web pages still listed Erin Barton as one of several Deputy Title IX coordinators to whom sexual harassment, relationship violence, or sexual assault could be reported, but that Kent State's other websites devoted to Title IX education and outreach did accurately report the roster of Title IX Coordinators as of that date.<sup>1</sup> Defendant denies the remainder of the paragraph.

### **Claim 1 - Title IX Claim against Kent State University**

153. In response to paragraph 153 of Plaintiff's Complaint, Defendant incorporates its responses to paragraphs 1 through 152 of Plaintiff's Complaint.

154. Defendant admits paragraph 154 of Plaintiff's Complaint.

155. Defendant admits paragraph 155 of Plaintiff's Complaint.

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<sup>1</sup> E.g. <https://www.kent.edu/hr/title-ix>, <https://www.kent.edu/raise>, <http://www.kent.edu/studentconduct/sexual-misconduct>.



156. Defendant admits paragraph 156 of Plaintiff's Complaint.

157. Defendant admits paragraph 157 of Plaintiff's Complaint.

158. Defendant denies paragraph 158 of Plaintiff's Complaint, as liability for a Title IX violation requires proof of more elements than related by Plaintiff.

159. In response to paragraph 159 of Plaintiff's Complaint, Defendant admits that sexual assault is widely regarded as a severe form of sexual harassment. Defendant denies the remaining allegations of the paragraph.

160. Defendant denies paragraph 160 of Plaintiff's Complaint as Defendant is without sufficient knowledge to form a belief as to any interaction between Kesterson and Mr. Linder.

161. Defendant denies paragraph 161 of Plaintiff's Complaint.

162. Defendant denies paragraph 162 of Plaintiff's Complaint.

163. Defendant denies paragraph 163 of Plaintiff's Complaint.

164. Defendant denies paragraph 164 of Plaintiff's Complaint.

165. Defendant denies paragraph 165 of Plaintiff's Complaint.

166. Defendant denies paragraph 166 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

167. Defendant denies paragraph 167 of Plaintiff's Complaint.

168. Defendant denies paragraph 168 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

169. Defendant denies paragraph 169 of Plaintiff's Complaint.

170. In response to paragraph 170 of Plaintiff's Complaint, Defendant admits that Coach Linder violated Kent State policy by failing to report the allegation of



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sexual assault to a Title IX Coordinator, but denies Plaintiff's implication that Coach Linder acted on behalf of the University in her actions regarding Plaintiff. Defendant denies any other allegations of this paragraph not specifically admitted.

171. In response to paragraph 171 of Plaintiff's Complaint, Defendant admits that Coach Linder violated Kent State policy by failing to report the allegation of sexual assault to a Title IX Coordinator, but denies Plaintiff's implication that Coach Linder acted on behalf of the University in her actions regarding Plaintiff. Defendant denies any other allegations of this paragraph not specifically admitted.

172. Defendant denies paragraph 172 of Plaintiff's Complaint as being without knowledge.

173. Defendant denies paragraph 173 of Plaintiff's Complaint as being without knowledge.

174. In response to paragraph 174 of Plaintiff's Complaint, Defendant admits that Coach Linder violated Kent State policy by failing to report the allegation of sexual assault to a Title IX Coordinator, but denies Plaintiff's implication that Coach Linder acted on behalf of the University in her actions regarding Plaintiff. Defendant denies any other allegations of this paragraph not specifically admitted.

175. Defendant denies paragraph 175 of Plaintiff's Complaint as being without knowledge.

176. Defendant denies paragraph 176 of Plaintiff's Complaint

177. In response to paragraph 177 of Plaintiff's Complaint, Defendant denies this paragraph and its subparts. The paragraph restates matters previously addressed in other sections of the Complaint, and Defendant's responses and



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denials are restated to the same extent previously made. Defendant denies any other allegations of this paragraph not specifically admitted.

178. In response to paragraph 178 of Plaintiff's Complaint, Defendant admits that Plaintiff made her first Title IX Complaint about Coach Linder's behavior on August 24, 2015 at approximately 10 a.m., and that that report constituted actual notice of the event to Defendant. However, Defendant denies that this event was a "second Title IX complaint." Defendant denies any other allegations of this paragraph not specifically admitted.

179. In response to paragraph 179 of Plaintiff's Complaint, Defendant admits that Ms. Barton was in a position to carry out some of Kent State's procedures in response to an allegation of sexual assault, as outlined in Kent State policies. Defendant denies the remainder of this paragraph.

180. In response to paragraph 180 of Plaintiff's Complaint, Defendant admits that if discrimination based upon gender was reported to Ms. Barton, Ms. Barton was in a position to carry out some of Kent State's procedures in response to an allegation of discrimination, as outlined in Kent State policies. Defendant denies the remainder of this paragraph.

181. Defendant admits paragraph 181 of Plaintiff's Complaint to the extent that Ms. Barton could recommend corrective measures for approval by other Kent State staff. All remaining allegations of the paragraph are denied.

182. Defendant denies paragraph 182 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

183. Defendant admits paragraph 183 of Plaintiff's Complaint.



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184. Defendant denies paragraph 184 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

185. Defendant admits paragraph 185 of Plaintiff's Complaint.

186. In response to paragraph 186 of Plaintiff's Complaint, Defendant admits that Mr. Nielsen was in a position to carry out some of Kent State's procedures in response to an allegation of a Title IX violation, as outlined in Kent State policies.

187. In response to paragraph 187 of Plaintiff's Complaint, Defendant admits that Mr. Nielsen was in a position to carry out some of Kent State's procedures in response to an allegation of discrimination as outlined in Kent State policies. Defendant denies the remainder of this paragraph.

188. Defendant admits paragraph 188 of Plaintiff's Complaint.

189. Defendant denies paragraph 189 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

190. Defendant admits paragraph 190 of Plaintiff's Complaint.

191. Defendant denies paragraph 191 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

192. Defendant admits paragraph 192 of Plaintiff's Complaint.

193. Defendant denies paragraph 193 of Plaintiff's Complaint.

194. Defendant denies paragraph 194 of Plaintiff's Complaint.

195. Defendant denies paragraph 195 of Plaintiff's Complaint.

196. Defendant denies paragraph 196 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

197. Defendant admits paragraph 197 of Plaintiff's Complaint.



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198. Defendant denies paragraph 198 of Plaintiff's Complaint as Defendant is without knowledge on this topic.

199. Defendant admits paragraph 199 of Plaintiff's Complaint.

200. Defendant denies paragraph 200 of Plaintiff's Complaint.

201. Defendant denies paragraph 201 of Plaintiff's Complaint.

202. Defendant denies paragraph 202 of Plaintiff's Complaint.

203. Defendant denies paragraph 203 of Plaintiff's Complaint.

204. Defendant denies paragraph 204 of Plaintiff's Complaint.

205. Defendant denies paragraph 205 of Plaintiff's Complaint.

206. Defendant denies paragraph 206 of Plaintiff's Complaint.

207. Defendant denies paragraph 207 of Plaintiff's Complaint.

208. Defendant denies paragraph 208 of Plaintiff's Complaint.

209. Defendant denies paragraph 209 of Plaintiff's Complaint.

210. Defendant denies paragraph 210 of Plaintiff's Complaint and specifically denies that the University or its employees engaged in any retaliation against Plaintiff.

211. Defendant denies paragraph 211 of Plaintiff's Complaint and specifically denies that Coach Oakley was hostile to Plaintiff or engaged in any retaliation whatsoever.

212. Defendant admits paragraph 212 of Plaintiff's Complaint.

213. Defendant denies paragraph 213 of Plaintiff's Complaint.

214. In response to paragraph 214 of Plaintiff's Complaint, Defendant admits that Coach Oakley did know the reason for Coach Linder's resignation because



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Coach Linder told Coach Oakley of the reason on the morning of August 28, 2015. Defendant denies that Coach Oakley threatened to dismiss any softball player who said anything bad about Coach Linder. Defendant denies the remaining allegations of this paragraph.

215. Defendant denies paragraph 215 of Plaintiff's Complaint.

216. Defendant denies paragraph 216 of Plaintiff's Complaint.

217. Defendant denies paragraph 217 of Plaintiff's Complaint.

218. Defendant denies paragraph 218 of Plaintiff's Complaint.

219. Defendant denies paragraph 219 of Plaintiff's Complaint.

220. Defendant denies paragraph 220 of Plaintiff's Complaint.

**Claim 2 – 42 U.S.C. § 1983 action  
Against Kent State University and Karen Linder**

221. In response to paragraph 221 of Plaintiff's Complaint, Defendant incorporates its responses to paragraphs 1 through 220 of Plaintiff's Complaint.

222. Defendant denies paragraph 222 of Plaintiff's Complaint.

223. Defendant denies paragraph 223 of Plaintiff's Complaint because Kent State University is not a "person" subject to 42 U.S.C. § 1983.

224. In response to paragraph 224 of Plaintiff's Complaint, Defendant admits that it had an obligation comply with Title IX, but Defendant denies that its duties are enforceable under 42 U.S.C. § 1983 because it is not a "person" under that statute. Defendant denies any other allegations of this paragraph not specifically admitted.

225. Defendant denies paragraph 225 of Plaintiff's Complaint.

226. Defendant denies paragraph 226 of Plaintiff's Complaint.

227. Defendant denies paragraph 227 of Plaintiff's Complaint.



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228. Defendant denies paragraph 228 of Plaintiff's Complaint.

229. In response to paragraph 229 of Plaintiff's Complaint, Defendant admits laws have been in place for decades prohibiting gender-based discrimination, but Defendant denies that Plaintiff's rights are enforceable under 42 U.S.C. § 1983 because Kent State University is not a "person" under that statute. Defendant denies any other allegations of this paragraph not specifically admitted.

230. Defendant denies paragraph 230 of Plaintiff's Complaint.

231. Defendant denies paragraph 231 of Plaintiff's Complaint.

**Claim 3 – Intentional Infliction of Emotional Distress  
against Karen Linder**

232. In response to paragraph 232 of Plaintiff's Complaint, Defendant incorporates its responses to paragraphs 1 through 231 of Plaintiff's Complaint.

233. Paragraph 233 of Plaintiff's Complaint is not directed at this Defendant and therefore does not require a response. To the extent that any response is necessary, the paragraph is denied.

234. Paragraph 234 of Plaintiff's Complaint is not directed at this Defendant and therefore does not require a response. To the extent that any response is necessary, the paragraph is denied.

235. Paragraph 235 of Plaintiff's Complaint is not directed at this Defendant and therefore does not require a response. To the extent that any response is necessary, the paragraph is denied.

236. Paragraph 236 of Plaintiff's Complaint is not directed at this Defendant and therefore does not require a response. To the extent that any response is necessary, the paragraph is denied.



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237. Paragraph 237 of Plaintiff's Complaint is not directed at this Defendant and therefore does not require a response. To the extent that any response is necessary, the paragraph is denied.

238. Paragraph 238 of Plaintiff's Complaint is not directed at this Defendant and therefore does not require a response. To the extent that any response is necessary, the paragraph is denied.

239. Paragraph 239 of Plaintiff's Complaint is not directed at this Defendant and therefore does not require a response. To the extent that any response is necessary, the paragraph is denied.

240. Defendant hereby denies any and all allegations of the Complaint not specifically admitted above.

#### **Affirmative Defenses**

1. This court lacks subject matter jurisdiction to hear some or all of these claims.

2. Defendant Kent State University is immune from suit pursuant to the doctrine of sovereign immunity and the Eleventh Amendment to the United States Constitution.

3. Defendant asserts any and all other immunities to which they may be entitled under state or federal law.

4. Plaintiff's claims are barred by her failure to mitigate her alleged damages.

5. Plaintiff's claims are barred by the doctrine of accord and satisfaction.

6. Plaintiff's claims are barred by the doctrine of negotiation and release.

7. Plaintiff's claims are barred by the doctrine of estoppel.



8. Plaintiff's claims are barred by the economic loss rule.

9. Plaintiff's claims are barred by a failure to state a claim upon which relief can be granted.

10. Defendant Kent State University is not a "person" within the meaning of 42 U.S.C. § 1983.

11. Defendant had legitimate, nondiscriminatory, non-pretextual reasons for all of its actions with respect to Plaintiff.

12. Defendant's response to Plaintiff's complaint was not clearly unreasonable in light of the known circumstances.

13. Defendant acted in good faith and compliance with the law.

14. Defendant's actions are subject to one or more privileges.

15. Plaintiff failed to exhaust administrative remedies.

16. Plaintiff failed to report claims of retaliation to "appropriate persons" within the meaning of Title IX.

17. Plaintiff's requested relief would violate the due process or other constitutional rights of others.

18. Defendants expressly reserve the right to assert additional defenses or additional affirmative defenses or to amend this Answer, as needed, as discovery progresses in this matter.

WHEREFORE, having fully answered, Defendant hereby demands that Plaintiff's Complaint against it be dismissed with prejudice at Plaintiff's cost.



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Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed with the court and served upon counsel for all other parties electronically this 20th day of April, 2016.

/s/ Richard P. Schroeter Jr.

Attorney for Kent State University



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