

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION AT PIKEVILLE  
CIVIL ACTION NO. 7:23-CV-00086-REW-EBA

ALISON APPLEBY

PLAINTIFF

v.

UNIVERSITY OF PIKEVILLE, INC.

DEFENDANT

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**ANSWER**

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Defendant University of Pikeville, Inc. (“UPIKE”), by counsel, files this Answer to Plaintiff’s Complaint.

**FIRST DEFENSE**

The Complaint fails to state a claim upon which relief can be granted and should be dismissed with prejudice.

**SECOND DEFENSE**

As for the specific allegations in the Plaintiff’s Complaint, Defendant states as follows:

1. Based upon information and belief, Defendant admits the allegations in paragraphs 1 and 2 of the Complaint.

2. The allegations of paragraphs 3, 4, and 5 of the Complaint do not require a factual response but Defendant generally admits this Court has subject matter jurisdiction over claims arising under federal law and that this Court has venue over the kinds of claims and allegations asserted in the Complaint.

3. Defendant admits as much of paragraph 6 of the Complaint as alleges that UPIKE is a private higher education institution; that UPIKE has received federal funding; and that UPIKE has over one hundred employees. Defendant denies any remaining allegations in paragraph 6 of the Complaint.

4. The allegations in paragraph 7 of the Complaint reference a UPIKE policy, the terms of which speak for themselves.

5. Defendant lacks sufficient information concerning the allegations in paragraph 8 of the Complaint and therefore denies those allegations.

6. As for the allegations of paragraph 9 of the Complaint, Defendant admits that Plaintiff uses a trained service dog and is without sufficient information concerning the remaining allegations of paragraph 9 of the Complaint and therefore denies those allegations.

7. As for the allegations of paragraph 10 of the Complaint, Defendant admits that Plaintiff participates and competes in archery tournaments and competitions and lacks sufficient knowledge concerning the remaining allegations in paragraph 10 of the Complaint and therefore denies those allegations.

8. As for the allegations of paragraph 11 of the Complaint, Defendant admits that UPIKE has a collegiate archery team and that Plaintiff was recruited to apply for admission at UPIKE to compete on its archery team but denies any remaining allegations in paragraph 11 of the Complaint.

9. Defendant denies the allegations in paragraph 12 of the Complaint as stated.

10. As for the allegations of paragraph 13 of the Complaint, Defendant generally admits that Plaintiff applied to, and was accepted to, UPIKE beginning in the fall semester of 2023. Defendant denies any remaining allegations in paragraph 13 of the Complaint.

11. Defendant denies the allegations of paragraphs 14, 15, 16, and 17 of the Complaint as stated.

12. As for the allegations of paragraphs 18 and 31 of the Complaint, the document submitted as Exhibit 2 to the Complaint speaks for itself and does not require a response. To the extent a response is necessary, Defendant generally admits that UPIKE's Campus Housing was notified on April 26, 2023, about an accommodation request by Plaintiff. Defendant denies any other allegations of these paragraphs of the Complaint.

13. Defendant lacks sufficient information as to the allegations in paragraph 19 of the Complaint and therefore denies those allegations.

14. Based on information and belief, Defendant admits that Plaintiff, her family, and Brady visited UPIKE's campus on June 16, 2023, for GROWL orientation. Defendant denies the remaining allegations in paragraph 20 of the Complaint.

15. As for the allegations of paragraph 21 of the Complaint, Defendant admits that Plaintiff was assigned a dorm room and roommate. Defendant lacks sufficient information as to the remaining allegations in paragraph 21 of the Complaint and therefore denies those.

16. As for the allegations in paragraph 22 of the Complaint, Defendant states that Plaintiff notified the UPIKE Chief of Public Safety Lee Upchurch and Interim Director of Residence Life and Engagement Luke Kopp on August 13, 2023, that Brady had become sick and inquired about which veterinarian to visit. Plaintiff also notified archery coach Ellie Yocum-Jackson who arranged for Plaintiff to ride with a graduate student, Anna Scarbrough, to the emergency veterinarian. Defendant denies the remaining allegations in paragraph 22 of the Complaint.

17. Defendant is without sufficient information as to the allegations in paragraphs 23 and 24 of the Complaint therefore denies those allegations.

18. As for the allegations in paragraph 25 of the Complaint, Defendant admits only that Plaintiff met with Dr. Mathys Meyer, Lee Upchurch, Chris Robinson, Coach Jackson, Johnathon Clemins, and Misty Asbury, with Plaintiff's parents participating by phone, where Plaintiff was notified that she, Brady, and her roommate would be transferred to another room while UPIKE inspected and tested their dorm room. Defendant denies any remaining allegations in paragraph 25 of the Complaint.

19. Defendant denies the allegations of paragraphs 26, 27, and 28 of the Complaint as stated.

20. Defendant admits that Plaintiff withdrew from UPIKE and did not participate in the Fall 2023 semester. Defendant denies any remaining allegations in paragraph 29 of the Complaint.

21. As for the allegations of paragraph 30 of the Complaint, the document submitted as Exhibit 1 to the Complaint speaks for itself and does not require a response. To the extent a response is necessary, Defendant generally admits that Plaintiff was notified via email on December 9, 2022, about her acceptance to UPIKE. Defendant denies any other allegations in paragraph 30 of the Complaint.

22. No response is required to the allegations in paragraph 32 of the Complaint, and Defendant incorporates its responses to each numerical paragraph.

23. Defendant denies the allegations in paragraphs 33, 34, and 35 of the Complaint as stated.

24. Defendant admits the allegations in paragraph 36 of the Complaint.

25. Defendant denies the allegations in paragraphs 37, 38, 39, and 40 of the Complaint as stated.

26. Defendant denies each and every allegation of the Complaint not specifically admitted in this Answer.

### **THIRD DEFENSE**

Plaintiff's claims are barred in whole or in part because she lacks standing on the basis as she is not a current student of the University, an accepted applicant of the University, or a current applicant for admission to the University.

### **FOURTH DEFENSE**

Defendant had no adequate and timely notice, actual or constructive, of the alleged discrimination of which the Plaintiff now complains, which is a bar to the Plaintiff's Complaint.

**FIFTH DEFENSE**

Defendant has acted in conformity with all applicable statutes, regulations, and common law.

**SIXTH DEFENSE**

At all times relevant hereto, Defendant acted in good faith, in accordance with law, without wrongful intent or malice, with proper justification and within the scope of its authority and/or exercised reasonable professional judgment with respect to Plaintiff, and Defendant relies on that good faith as a bar to Plaintiff's Complaint.

**SEVENTH DEFENSE**

Plaintiff is not entitled to recover any damages whatsoever; however, to the extent Plaintiff is permitted to recover any damages in this action, Plaintiff is limited to a recovery of actual damages only.

**EIGHTH DEFENSE**

Plaintiff's claims should be barred, in whole or in part, to the extent she has failed to request reasonable accommodations and/or exhaust available internal and/or administrative remedies.

**NINETH DEFENSE**

None of Defendant's actions or omissions, if any, were motivated or based, in whole or in part, on any alleged discriminatory or retaliatory reasons nor any related considerations but were in fact based on the legitimate exercise of

professional duties, rights, and responsibilities, including but not necessarily limited to, making recommendations concerning Plaintiff.

**TENTH DEFENSE**

Plaintiff's claims are barred in whole or in part to the extent she has failed to mitigate any and all of her alleged damages or has aggravated them by her own actions or inactions.

**ELEVENTH DEFENSE**

Any damages alleged to have been suffered by Plaintiff, which damages are denied, were proximately and solely caused by Plaintiff's own conduct, including but not limited to Plaintiff's failure to participate in the interactive process in good faith as required and Plaintiff's withdrawal from the UPIKE despite repeated accommodations being provided, and Plaintiff has thereby waived any claim and is estopped by her actions, and Defendant relies upon these facts as a complete bar to Plaintiff's Complaint.

**TWELFTH DEFENSE**

No action of Defendant affected Plaintiff's emotional wellbeing or mental health and Plaintiff is not entitled to recovery of any damages for any alleged emotional distress, mental anguish, embarrassment, humiliation, or pain and suffering, as those are not awardable or recognized for a private right of action by controlling statute or law.

**THIRTEENTH DEFENSE**

Defendant provisionally pleads the affirmative defenses set forth in Fed. R. Civ. P. 8(c) and 12(b), as if fully restated herein and to the extent not already expressly stated, with the applicability, if any, to be determined during discovery.

**FOURTEENTH DEFENSE**

Defendant reserves the right to raise additional defenses that may become known in the course of discovery.

WHEREFORE, Defendant requests judgment be entered in its favor, that the Plaintiff's Complaint be dismissed with prejudice and that the Plaintiff takes nothing. Defendant further requests its costs and expenses, including attorney's fees, expended in this matter, for a trial by jury where applicable, and for any and all other appropriate relief to which it may appear to be entitled.

Respectfully submitted,

/s/ Bryan H. Beaman

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ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I certify that on this the 20<sup>th</sup> day of November, 2023, this Answer was electronically filed using the Court's ECF filing system which will send notification to all counsel of record.

/s/ Bryan H. Beauman  
ATTORNEY FOR DEFENDANT