

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>EMILY BLACK,  Plaintiff,  v.  STATE OF IOWA and ROBINETTE KELLEY, individually and as an Iowa State University administrator,  Defendants.</p>	<p>CASE No.  <b>PETITION AND JURY DEMAND</b></p>
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COMES NOW, the Plaintiff, Emily Black, by and through Counsel, and brings her complaint against Defendants State of Iowa and Robinette Kelley, individually and as an Iowa State University administrator, stating to the court as follows:

**INTRODUCTION**

1. This is an action under and pursuant to the Iowa Code Chapter 669, the Iowa Tort Claims Act, the State of Iowa Constitution, and common law.
2. Under the State of Iowa Constitution, Plaintiff is guaranteed equal protection of the law.

**JURISDICTION**

3. The unlawful practices alleged below were committed in Story County, Iowa.
4. Plaintiff resides in Polk County. Venue is properly laid in this judicial district pursuant to Iowa Code § 669.4.

**PARTIES**

5. At all times material to this Petition, Plaintiff Emily Black (“Emily”) was a citizen and resident of Ames, Story County, Iowa.

6. At all times material to this petition, Defendant State of Iowa, a sovereign state as defined in the Iowa Code, has its principal place of business in Des Moines, Polk County, Iowa. Defendant State of Iowa provides public funds for and operates Iowa State University, in Ames, Story County, Iowa.

7. At all times material to this petition, Defendant Robinette Kelley (“Kelley”) was the Director of the Office of Equal Opportunity at Iowa State University. At the time of the incident giving rise to this lawsuit, Kelley was an employee and/or agent of the State of Iowa, acting in the course of her employment, while furthering the business of the State of Iowa. Kelley was terminated from employment with the State of Iowa during the investigation of Plaintiff’s complaints.

#### **PROCEDURAL REQUIREMENTS**

8. On January 9, 2017, within two years of the time her complaint accrued, Plaintiff Emily Black submitted two State Appeal Board Claims, one against the State of Iowa and the other against Robinette Kelley to the State Appeal Board.

9. On June 9, 2017, six months after Plaintiff’s submission of the State Appeal Board Claims, the State Appeal Board had not made final disposition of Plaintiff’s claims.

10. Plaintiff withdrew her claims from consideration and notified the Director of the Department of Management in writing on October 6, 2017, and can now bring suit under Iowa Code § 669.5(1).

#### **FACTUAL BACKGROUND**

11. In early October 2013, Plaintiff Emily Black, was raped by a former friend, Hunter Hansen, in her dorm room at Iowa State University.

12. On November 19, 2013, Emily sent Mr. Hansen a text message accusing him of rape. She stated, “I said no to you and I passed out . . . I was clearly too drunk to defend myself and you should have known that by me saying no. What you did is rape.”

13. Mr. Hansen responded “I know there’s no amount of sorry I can say. . . . I feel like such a terrible human being and I didn’t want to be that guy that ever did that to a girl.”

14. Emily then wrote, “So you fully realize this is rape[?]” to which he responded, “I know what happened that night should not have happened and even if I was drunk I should not have done that.”

15. Shortly thereafter, Emily told her sister, Angela Black, and friends, Julia Holen and Anthony Hansen, about the rape.

16. Emily went to the Women’s Center at Sloss House, where she was referred to the Dean of Students’ Office. There Emily spoke with Lieutenant Sara Jensen of the Iowa State University Police Department (“ISU PD”) on November 21, 2013.

17. Emily told Lieutenant Jensen about the incident and Lieutenant Jensen noted the text messages between Emily and Mr. Hansen.

18. After Emily reported the rape, ISU PD connected Emily with an Advocate, Natasha Oren, at the Assault Care Center Extending Shelter & Support (ACCESS).

19. On Friday, December 6, 2013, Emily made a recorded phone call to Mr. Hansen. She began the conversation by telling him that she was having a difficult time with the incident and stated that she wanted to know why he did it.

20. Mr. Hansen responded by telling her that he didn’t know and that it was a “big mistake.” Emily told him that he had sex with her even though she said “no,” was very

intoxicated, and had become unconscious. Mr. Hansen stated the he knew the night was a “mistake” and that he was “owning up to making a mistake.”

21. Emily ended the conversation by telling Mr. Hansen she did not want to talk to him again and that he should not try to talk to her.

22. Following the December 6, 2013, conversation a no-contact order between Emily and Mr. Hansen was entered.

23. On December 9, 2013, Officer DeLashmutt, with the ISU PD, and Lieutenant Jensen interviewed Mr. Hansen and his roommate, Paul Gregory, in their dorm room.

24. On December 10, 2013, Lieutenant Jensen emailed Emily to let her know that she and Officer DeLashmutt had had spoken with Mr. Hansen and his roommate.

25. At that time, Lieutenant Jensen also set up a meeting with Emily’s friend, Julia Holen, as well as with Emily’s sister, Angela Black.

26. Sometime in December 2013, Emily and Julia Holen were on the elevator to go down to lunch when the elevator stopped at Mr. Hansen’s floor. When the door opened, Mr. Hansen and his friends laughed when they saw Emily and got on the elevator.

27. Emily panicked when she saw Mr. Hansen and was frustrated that he had violated the no-contact order.

28. Lieutenant Jensen met with Julia Holen to speak to about the case on December 13, 2013. On December 17, 2013, Lieutenant Jensen reported interviewing Emily’s sister, Angela Black.

29. Emily’s roommate, Emilie Larson, was interviewed by ISU PD on January 15, 2014.

30. Early in 2014, Emily met with Defendant Kelley for an initial interview. Emily did not understand exactly what information Kelley needed from her.

31. Emily believed that Defendant Kelley had the ISU PD's files, and therefore was familiar with the events that had taken place.

32. During their meeting, Defendant Kelley asked Emily what happened. Emily felt that Defendant Kelley was not interested in her case.

33. Defendant Kelley was Emily's only contact with the ISU Office of Equal Opportunity (OEO).

34. After interviewing Emily, Defendant Kelley began her investigation.

35. Defendant Kelley failed to interview the people on Emily's list, including Angela Black, Emilie Larson, and Anthony Hansen.

36. Defendant Kelley interviewed many of Hunter Hansen's friends, including Paul Gregory.

37. The content of many of the stories told by witnesses during interviews done by Defendant Kelley were completely contradicted by the statements taken by the ISU PD.

38. Lieutenant Jensen of the ISU PD met with Emily again on January 23, 2014, to let her know that all of the interviews had been conducted.

39. On March 4, 2014, Emily contacted Lieutenant Jensen to let her know that she would like to proceed with the criminal case.

40. Lieutenant Jensen noted that Emily's case would be referred to the Story County Attorney's office for review. Story County decided it would not file charges.

41. During this time period, Emily continued to see Mr. Hansen on campus and on the bus.

42. Emily then sought to be on campus as little as possible.

43. Emily's post-traumatic stress disorder caused her to miss class and resulted in poor grades.

44. In April of 2014, Emily felt she could not continue at Iowa State University, as a result of the rape and her subsequent PTSD and other problems, and she withdrew.

45. In July of 2014, Defendant Kelley met with Emily and her friend Megan in a closed meeting. At that time, Defendant Kelley informed Emily that her case was being "closed" as unfounded.

46. Defendant Kelley told Emily that she simply had not provided Defendant Kelley with enough information.

47. Defendant Kelley stressed to Emily that Mr. Hansen "really liked her a lot."

48. Emily went back to the ISU PD to see if there was anything further they could do to help with her case.

49. Lieutenant Jensen's investigation continued. On August 28, 2014, she submitted a subpoena request for Emily and Mr. Hansen's cell phone records and on September 4, 2014, Lieutenant Jensen submitted a subpoena request for the Iowa State University investigative records involving Emily and Mr. Hansen.

50. On September 2, 2014, Emily participated in a follow-up interview with Iowa State Police Chief, Jerry Stewart, Lieutenant Jensen, and Emily's advocate, Natasha Oren.

51. At the meeting, Emily reiterated her story, and told the officers that since the rape she suffered from PTSD, trouble sleeping, and had to sleep with her sister at night in order to feel safe.

52. At some point, Emily began seeing a therapist, due to panic attacks and severe depression.

53. Chief Stewart put together a binder of expanded information for Emily which included the pretext phone transcripts and text messages between Emily and her rapist that the ISU PD had gathered.

54. After her meeting with ISU PD in September of 2014, Emily received no further communication from ISU entities, but reasonably believed that her case continued to be investigated.

55. On October 19, 2014, Chief Stewart sent a copy of the binder of information and a letter to the Iowa State Office of Equal Opportunity (OEO) with a request that they review the case in light of the more extensive information.

56. Chief Stewart did not receive a response.

57. On February 19, 2015, Chief Stewart had the information binder resent to the OEO and to the ISU PD. Chief Stewart then requested a meeting with the two departments to discuss the case.

58. On March 15, 2015, Chief Stewart met with representatives of ISU PD and OEO to discuss the case.

59. During the course of this meeting, Defendant Kelley declined to re-open Emily's case, and ISU PD supported that decision.

60. On October 22, 2015, Emily called ISU PD to check the status of her case.

61. No one returned Emily's call.

62. On October 26, 2015, Emily had an appointment with her new advocate, Lori Allen, at ACCESS.

63. On October 30, 2015, Lori Allen met with Jake Cummings with the Iowa State OEO. Cummings indicated to Allen that Kelley declined to open a second investigation or reopen the case, contrary to the assumption that Emily had communicated to Allen.

64. On November 5, 2015, Emily attended a meeting at ACCESS with OEO representatives Dave Konopa and Jacob Cummings.

65. Mr. Cummings attempted to reconstruct what he knew of the case, but had great difficulty since Defendant Kelley had been terminated from employment by this time.

66. At this meeting, Emily was informed that her case had not been re-opened in spite of her numerous requests, and in spite of Emily's belief that Chief Stewart and the ISU PD would re-open her case.

67. Emily was told her case was not re-opened because it was unclear in the text messages whether Mr. Hansen was apologizing for raping her or apologizing because he lost her as a friend.

68. The fact that her case was closed and had not been reopened had never been communicated to Emily before this meeting.

69. Despite having significant evidence—including text messages and a recorded phone call containing admissions of guilt by Mr. Hansen—as well as interviews from friends and family members which corroborated Emily's story, ISU OEO and the ISU PD failed protect Emily and to thoroughly and completely investigate her case or to facilitate the bringing of criminal charges.

**COUNT I – VIOLATION OF ARTICLE I, SECTION 6 OF THE CONSTITUTION  
OF THE STATE OF IOWA AGAINST ALL DEFENDANTS**

70. The Iowa Constitution guarantees all people the equal protection of the law.



71. Defendants, through their agents, servants and employees, in their individual and official capacities, were negligent in the handling of Plaintiff's sexual assault complaint, and failed to ensure Plaintiff equal protection of the law as a college student, a woman, and victim of rape on Iowa State's campus. Rape disproportionately affects women, as almost all victims of rape are female.

72. Defendants deprived Plaintiff the equal protection of the law by establishing, maintaining, and/or enforcing policies which allowed Defendants to fail to properly investigate Plaintiff's sexual assault case, or by failing to adhere to the policies it had developed in order to administer justice under these circumstances, subjecting Plaintiff to mental anguish and despair.

73. The deprivation of Plaintiff's Equal Protection guarantee was the direct result of the policy, practice, and customs of Defendants.

74. Defendants' decision to deny Plaintiff equal protection of the law on the basis of sex had a disparate impact on the Plaintiff, and the failure to ensure her safety and peace of mind eventually caused her to drop out of Iowa State University in April of 2014.

75. The course of conduct taken by or attributable to Defendants is not tailored to further any substantial or compelling state interest. Accordingly, their conduct violates the Equal Protection guarantee found in the Iowa Constitution.

76. As a result of Defendants' acts aforesaid, the Plaintiff has in the past and will in the future suffer mental and emotional pain and anguish, humiliation, embarrassment, anxiety, loss of enjoyment of life, loss of educational opportunities, and has incurred medical and counseling costs, and will incur those expenses in the future, as well as lost past and future income and earning capacity.

77. Defendants' denial of Plaintiffs' rights under Article I, Section 6 of the Constitution of the State of Iowa was willful and wanton, and done with malice or in reckless disregard of the rights of Plaintiff, entitling her to punitive damages against individual Defendant Robinette Kelley.

WHEREFORE, Plaintiff requests judgment against Defendants in an amount that will fully and fairly compensate her for her injuries and damages, and for punitive damages against the individual Defendant Robinette Kelley in an amount sufficient to punish her and deter the Defendants and others from the same or similar wrongful conduct, and for interest, attorney's fees and costs as allowed by law.

#### **COUNT II – NEGLIGENCE AGAINST ALL DEFENDANTS**

78. At all times material to this case, Defendant State of Iowa, by and through its agent and/or employee, Defendant Kelley, individually and as a University administrator, had a duty to Plaintiff to use reasonable care in the investigation of her rape case and in ensuring her personal safety as a student at Iowa State University.

79. Defendant Kelley was the Director of the Office of Equal Opportunity at Iowa State University, where she managed AA/EOO and equity compliance programs, and as such, was an employee and agent acting in the course of her employment while furthering the business of the State of Iowa.

80. The State of Iowa is liable for the negligent conduct of Defendant Kelley as it occurred within the course and scope of her employment with the Defendant State of Iowa.

81. Throughout the years 2014 and 2015, Defendant Kelley and her office had a duty to thoroughly and completely investigate the report of rape by Plaintiff Emily Black, to protect

her while she remained at Iowa State University, and to assure her a safe environment so that she could remain a student at Iowa State University.

82. Defendant Kelley was negligent in her investigation of Plaintiff's case in the following particulars:

- a. Failing to conduct a thorough and balanced investigation;
- b. Failing to keep Plaintiff apprised of the status of her case;
- c. Failing to re-open Plaintiff's case in the face of strong evidence and at the suggestion of the ISU Chief of Police;
- d. Re-victimizing Plaintiff during their meetings by taking the perpetrator's side;
- e. Failing to keep Plaintiff's rapist away from her;
- f. Failing to ensure that Plaintiff did not come into contact with her rapist during the investigatory period.

83. Defendant Iowa State is liable for Defendant Kelley's negligence under the doctrine of *respondeat superior*.

84. Defendants' negligence was a cause of harm to Plaintiff.

85. As a result of Defendants' breach of duty of care, Plaintiff has suffered and will continue to suffer mental and emotional pain and anguish, and past and future medical and counseling expenses. Plaintiff will also suffer lost earnings and emoluments of employment, lost earning capacity, and past and future permanent mental impairment.

WHEREFORE, Plaintiff Emily Black requests judgment against Defendants in an amount which will fully and fairly compensate her for her injuries and damages, and for interests and costs as allowed by law and such other relief as may be just in the premises.

**COUNT III – PREMISES LIABILITY AGAINST  
DEFENDANT STATE OF IOWA**

86. At all times material to this Petition, Defendant State of Iowa controlled the premises on which Plaintiff was raped.

87. Defendant State of Iowa knew, or in the exercise of reasonable care should have known, that there was a significant danger that students would be raped on their premises.

88. Defendant State of Iowa knew, or in the exercise of reasonable care should have known, that Plaintiff was unable to protect herself from rape.

89. Defendant State of Iowa was negligent in failing to take reasonable measures to protect Plaintiff from her rapist.

90. Defendant State of Iowa's conduct was a cause of Plaintiff's injuries and damages.

91. As a result of Defendants' breach of duty of care, Plaintiff has suffered and will continue to suffer mental and emotional pain and anguish, and past and future medical and counseling expenses. Plaintiff will also suffer lost earning capacity and past and future permanent mental impairment.

WHEREFORE, Plaintiff demands judgment against Defendant State of Iowa in an amount that will fully and fairly compensate her for her injuries and damages, for court costs, interest as allowed by law, and for such other appropriate relief as the Court finds to be just and equitable.



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**ATTORNEYS FOR PLAINTIFF**

Original e-filed.